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THE LAW OF
SMALL HOLDINGS
IN
ENGLAND AND WALES.

S. W. CLARKE.

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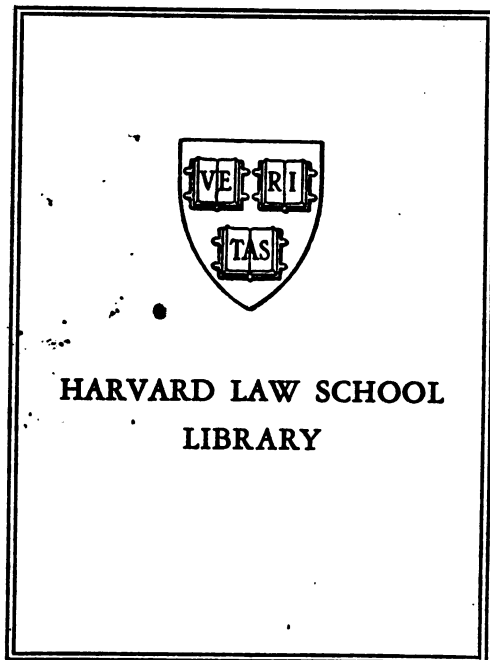
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THE LAW
OF
SMALL HOLDINGS
IN ENGLAND AND WALES.

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THE LAW

OF

SMALL HOLDINGS

IN ENGLAND AND WALES.

WITH APPENDICES OF FORMS, STATUTES, RULES,
AND DEPARTMENTAL CIRCULARS.

BY

SIDNEY W. CLARKE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

LONDON:

BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.

SHAW & SONS, 7 & 8, FETTER LANE, E.C.

Law Publishers and Printers.

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LONDON:
PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
DUKE STREET, STAMFORD STREET, S.E., AND GREAT WINDMILL STREET, W.

PREFACE.

I HAVE endeavoured to bring together within the compass of a handy volume the numerous statutes and parts of statutes that must be referred to by those desirous of ascertaining and administering the law relating to the provision and management of small holdings, using that term in its technical sense as defined in the Small Holdings Act, 1907. The Small Holdings Acts themselves are of considerable length, and they either incorporate or involve reference to over a score of other enactments, many of them, such as the Land Transfer Acts, the Lands Clauses Acts, and the Agricultural Holdings Acts, of great length and some complexity. In order to save space I have eliminated such of the provisions of these measures as appear to be unimportant or not applicable to the immediate subject of small holdings, and by the free use of cross-references, and by what I hope will be found to be careful and accurate annotation, I have tried to avoid repetition and to indicate the true effect of the law relating to small holdings, and to point out, in various respects, how that law can best be applied by those responsible for the administration of the Small Holdings Acts, 1892 and 1907. I desire to gratefully acknowledge the valuable assistance I

have received from Clerks to County Councils and others practically interested in providing small holdings, and particularly from my friend, Mr. S. Thornely, the Clerk to the Worcestershire County Council, who freely placed at my disposal the experience obtained in many years successful work under the Act of 1892, for which that council have gained such an enviable reputation.

SIDNEY W. CLARKE.

3 ESSEX COURT, TEMPLE.
January, 1908.

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THE LAW OF
SMALL HOLDINGS.

INTRODUCTION.

Scope of the present work.—A small holding is defined by the Small Holdings Act, 1907, for the purposes of the Acts of 1892 and 1907, as an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding fifty pounds. These pages deal only with small holdings within the scope of the above mentioned Acts; allotments, though undoubtedly small holdings, in the popular sense of the expression, are not referred to except incidentally, and such parts of the Act of 1907 as relate exclusively to allotments are omitted from consideration. There is now, practically, very little difference between a small holding and an allotment, and possibly in the near future Parliament will consolidate the law relating to the two classes of small parcels of land and place them on the same footing.

The law relating to small holdings is contained in the Small Holdings Acts, 1892 and 1907, and by necessary inference or express enactment in a number of other measures which will be found set out, wholly or partly, in Appendix II.

The object of this Introduction is to outline the principal matters arising under these enactments, to indicate the changes in the law effected by the Act of 1907, which came into operation on January 1st, 1908, and to draw attention to some practical points that will have to be considered by councils and others interested in the administration of the Acts.

B

Small holdings must be provided if there is a demand for them.—The outstanding feature of the recent extension of the law relating to small holdings is that holdings must be provided for every county and county borough in which there is a demand for them. It is no longer left to the county council, in which expression is included the council of a county borough, to decide whether holdings shall be provided or not, and, further, it is now the declared intention of Parliament that everything possible shall be done to create a demand for holdings and to stimulate and awaken a desire to obtain holdings in the hearts of the agricultural and labouring classes. The Act of 1892 was optional in every way, the Act of 1907 adds persuasion and compulsion to the system. Under the earlier Act a county council could take action if they thought fit to do so, and it is upon record that, for various reasons into which it is not now necessary to enter, but few of them did undertake responsibilities under the Act, though, where a council did adopt the Act and provide holdings the results have been of a satisfactory and encouraging nature. Under the new system inaugurated by the Act of 1907, and in passing it may be observed that the two Acts are to be construed together (1907, s. 47 (1)), though the county councils are still the primary administrative authorities, they are to be goaded into action, or their powers and duties will be exercised, on their behalf and at their expense, by specially constituted officials of the Board of Agriculture and Fisheries.

Experimental holdings.—Further, the Board, in addition to and quite apart from any action that may be taken by or on behalf of the councils, may provide small holdings in any locality, a word of vague and wide possibilities, for the purpose of demonstrating the feasibility of establishing small holdings in such locality, and in connection therewith may exercise the powers of county councils under the Acts, except those of acquiring land compulsorily and of borrowing money (1907, s. 16).

When the Board thus embarks on demonstration, the ex-

penses incurred will not fall on the rates, but will be defrayed out of moneys provided by Parliament and placed to the credit of an account opened at the Bank of England, which is called "The Small Holdings Account" (1907, s. 16), and is started with a credit of £100,000 from the Exchequer. The only check upon the experimental activities of the Board is the financial one of the amount for the time being standing to the credit of the account.

The Small Holdings Commissioners.—Before the Act of 1907 can get fairly into operation a good deal of spade work will have to be done in the way of making inquiries and stimulating activity throughout the country. For this purpose two Small Holdings Commissioners have been appointed, who are the officers of and under the direction and control of the Board, each of whom may act separately (1907, s. 41), whose duty it will be to ascertain the extent to which there is a demand for small holdings in the several counties, or would be a demand if suitable land were available, and the extent to which it will be reasonably practicable under the Acts to satisfy any such demand. All local authorities are required to supply information and otherwise assist the Commissioners, who will probably be empowered by the Board to hold local inquiries (1907, ss. 2, 42). When the Commissioners have acquired what they deem to be sufficient information as regards any county, they must report to the Board, and advise whether it is desirable that a scheme for the provision of holdings in or for that county should be made (1907, s. 2).

Schemes.—If the Board, on such a report being made to them, agree as to the desirability of a scheme being made, the county council must be consulted, and it then becomes the duty of the council to prepare one or more draft schemes to give effect to the proposals of the Commissioners. A county council, however, need not wait for the Commissioners to report, they may prepare a scheme or schemes on their own initiative, and two or more counties may prepare a scheme jointly, which will provide for joint action being taken by such councils (1907, s. 3 (3) (5)).

If the county council decline to undertake the preparation of a draft scheme, or if within six months after receiving the Commissioners' report from the Board, or within such extended time as may be allowed by the Board, they fail to prepare such one or more draft schemes as appear to the Board desirable, the Board may direct a draft scheme or schemes for that county to be prepared by the Commissioners (1907, s. 3 (2)).

A draft scheme, by whoever prepared, may specify (1) the localities in which land for small holdings is to be acquired; (2) the approximate quantity of land that will be required, and the number, nature, and size of the small holdings to be provided in each locality—it may here be observed that a council are not restricted to one set of holdings; they may provide separate lots of holdings in or for different parts of the county; (3) whether rights of grazing or other similar rights should be attached to the holdings, and the quantity of land or extent and nature of the rights to be acquired for that purpose; (4) the time within which the scheme or any part thereof is to be carried into effect; and (5) such incidental, consequential, or supplemental provisions (including provisions as to the subsequent variations of the scheme) as may appear necessary and proper (1907, s. 3 (4)).

It would seem, however, that it is not essential that a draft scheme prepared by a council or councils on their own initiative should contain these matters in any precise form, and no form is prescribed for a draft scheme. The Board have suggested that when a council prepare a scheme, without waiting for a report from the Commissioners, it might take the form of a report to the council by the Small Holdings and Allotments Committee thereof (see p. 7, *post*), which, the Board suggest (see Circular of January 1, 1908, p. 256, *post*), should specify "the land proposed to be acquired, the price or rent at which it can be obtained, the manner in which it is proposed to be sub-divided, and the method and cost of the equipment, in order that the Board may be in a position to judge whether the scheme is of such a character

that they would be justified in giving it their approval, and thereby undertaking under section 5 (4) of the Act of 1907 to repay half of any loss which might be incurred. Where the council propose to acquire land at a sale by auction this procedure may create some difficulty, but in most other cases it should be possible to frame a scheme on these lines before the council unconditionally enter into a contract for the purchase or hiring of land, and where land is acquired at an auction the Board will be ready to consider a subsequent application for their approval. In these circumstances the Board do not think that any model form of scheme can conveniently be prescribed, and they are of opinion that each county council should submit their proposals in the form which appears most convenient in the particular circumstances of each case. It will probably be desirable to prepare a separate scheme for each individual transaction, and the Board will be glad to be informed at an early stage in the proceedings of any action proposed to be taken, in order that they may have an opportunity of expressing their opinion before a decision is arrived at as to the particular land to be acquired."

When a draft scheme has been prepared it must be sent to the Board, and if prepared by the Commissioners on the default of a council, a copy must also be sent to the council concerned. The Board may propose modifications to the draft scheme, and such scheme and modifications must be published and advertised, together with notice of the time within which objections are to be lodged. The Board will prescribe the method of publication and advertisement (see, however, notes to s. 4, p. 66, *post*).

Any one may lodge objections, and the Board must consider the draft scheme and any objections duly made, and may hold a public local inquiry—the Board *must* hold such an inquiry if the council concerned are objectors. At such inquiry the council concerned may appear and be heard, and such other persons as the person holding the inquiry may allow. Notice of the inquiry must be given, and the person

holding the inquiry, if a Commissioner or an officer of the Board, will have the same powers as the inspectors of the Local Government Board have for the purpose of inquiries under the Public Health Acts (1907, ss. 4 (2) and 42). The Board may then either confirm the scheme, with or without modification, or may annul it.

Carrying scheme into effect.—When a scheme has been confirmed, it is the duty of the council concerned to carry it into effect, and if they fail to do so within the time limited in the scheme, or within such further time as the Board may allow, the Board must direct the Small Holdings Commissioners to proceed thereunder, whereupon the Commissioners will be endowed with all the powers of a county council under the Small Holdings Acts, 1892 and 1907, and the county fund or borough fund or rate will be chargeable with all expenses properly incurred by the Commissioners in the exercise of such powers (1907, s. 5 (1) (2)). Advisory and managing committees may be appointed by the Board to assist the Commissioners, and also to assist the Board when and if it undertakes the provision of small holdings for the purpose of demonstration (1907, s. 18).

For the purpose of carrying out a scheme a council may exercise any of the powers conferred on them by the Acts.

Unless the Board decides otherwise, there must be a scheme or schemes prepared, confirmed, and carried into effect in every county and in every county borough, and that though the council may consider any scheme unnecessary, or the particular scheme to be undesirable. In certain places and circumstances it may be that the carrying out of the scheme can only be done at a loss, though, as will be seen, the provisions of the new Act are calculated to considerably reduce the cost to the rates; and, in further pursuance of that policy, it is provided that the Board may pay or undertake to pay the whole or any part of the loss out of the Small Holdings Account (1907, s. 5 (4)). The Board have announced that the contribution towards loss will not exceed one-half thereof.

Powers and duties of councils.—Having thus briefly reviewed the machinery created by the Act of 1907 for the purpose of compelling the provision of small holdings wherever the Board of Agriculture and Fisheries deem desirable, we pass on to consider the powers and obligations of the councils in connection with such provision; and the first point to be noted is that such powers are not dependent upon the making of a scheme. They exist whether a scheme is made or not, and it is competent for a council to proceed to exercise their powers without waiting for a scheme, though should any scheme be subsequently made the council will have to carry it out, or see it carried into effect at their expense. The advantage, however, of waiting for a scheme will be that the council will then know the extent of the requirements to be imposed upon them, and will, if they work thereunder and a loss results, have a prospect of being repaid one half of the loss out of the Small Holdings Account (see p. 6, *ante*, and note to s. 5 (4), p. 70, *post*).

Small Holdings and Allotments Committee.—The first step to be taken by a council, and one that must be taken in any event, is to establish a "Small Holdings and Allotments Committee," which will take the place and, *inter alia*, perform the duties of any standing committee appointed under the Allotments Acts, and any committee appointed under s. 16 of the Small Holdings Act, 1892, will cease to exist. The new committee may consist either wholly or partly of members of the council, but in the latter case members must be in a majority; and to such committee must stand referred all matters relating to the exercise and performance by the council of their powers and duties under (*inter alia*) the Small Holdings Acts, 1892 and 1907, except the powers of raising a rate and borrowing money, and the council before exercising any of their powers must, unless the matter is urgent, receive and consider the report of the committee on the matter in question. The council may delegate to the committee any of their powers under the Acts (except those of rating and borrowing), and the com-

mittee may in turn delegate any of their powers to sub-committees. Any sub-committee may consist wholly or partly of members of the committee, but in appointing any sub-committee to which is delegated powers as to the management of the small holdings, regard must be had to the advisability of including members of the borough, urban district, or parish councils, and, in rural parishes where there is no parish council, of the parish meeting, of the areas in which the holdings are situate or for which they are provided, and other persons acquainted with the special needs and circumstances of the area (1907, ss. 36 and 46 (4)).

In connection with the delegation of powers to the committee, attention may be drawn to the following extract from a circular issued by the Board on January 1, 1908, for the full text of which see p. 256, *post*:—"The Board are of opinion that with a view of avoiding all unnecessary delay it is desirable that the Small Holdings Committee should be authorised by your council to conduct all the correspondence relating to the Act and to carry out inquiries, etc., without the necessity of having to refer each point to the next quarterly meeting of the council. The Board are advised that section 36 so far as it requires the appointment of a committee and authorises the delegation of powers to such a committee, applies to the councils of county boroughs as well as to county councils, but to avoid any question as to the powers of the committee it is desirable that they should be appointed allotment managers under section 6 of the Allotments Act, 1887."

In addition to delegating powers to the committee, a council may appoint the council of any borough or urban district in the county their agents for the exercise of their powers as to providing holdings for such borough or district, and the later council may agree to pay the whole or any part of the loss incurred in connection with such holdings (1907, s. 15).

A council is given new powers as to promoting or assisting societies formed on a co-operative basis with the object of

promoting the provision or profitable working of small holdings. Similar powers are conferred upon the Board (1907, s. 39).

Acquisition of land.—A council may obtain land for the purpose of providing small holdings by purchase, lease, gift or exchange. We need here consider only the first two methods. A purchase or lease may be by voluntary agreement with the owner of the land, or compulsorily, and limited owners are given large powers of disposing of land (1892, ss. 12, 13; 1907, ss. 28, 29). The land acquired need not necessarily be situate within the area of the acquiring council, and may be of any tenure. But if copyhold or customary freehold land is acquired by purchase, it must be at once enfranchised. The council should also redeem any tithe or other permanent charge to which any land acquired may be subject. Before acquiring land a council must decide, unless the point has already been settled by a scheme, what they are going to do with it. If they propose to *sell* the holdings to the small holders, which was the method contemplated by the Act of 1892, they can only buy or lease land voluntarily; if they propose to *let* the small holdings to tenants, which appears to be the method specially favoured by the Act of 1907, they may purchase or lease by agreement, or, if they cannot otherwise obtain suitable land at a reasonable price, compulsorily. Land acquired for selling may, however, be let to tenants; but it would seem that land purchased in order to be let cannot subsequently be sold to small holders.

If the council desire to sell the land they must purchase, and economically this will, perhaps, be the better course in the long run; for under the Acts the small holder will for a limited period pay only a little more each year than he would have to pay as rent, and will ultimately become the absolute owner of his holding, and so will help to form or re-establish a class of small yeomen or peasant proprietors in this country. The policy of hiring land and letting it to tenants has, however, some immediate advantages; the

council will be saved the trouble and expense of registering their title at the Land Registry, the initial capital outlay will be considerably less, and they will, therefore, be enabled to provide a greater number of holdings, while the powers given to limited owners to lease up to a term of thirty-five years, and the compulsory power of hiring for a like term, with, in both cases, a power of indefinitely renewing the council's tenancy for a similar period, will practically give the tenants fixity of tenure.

For various matters relating to the exercise by a council of their powers to acquire land see Notes to ss. 1, 3, 10, 13, and 18, of the Act of 1892, and to ss. 6, 26, 28, 35, and Sched. I. of the Act of 1907.

A council in acquiring land for the purpose of converting it into small holdings must have due regard to the suitability of the land, as respects character, soil, situation, convenience of access, proximity to market, state of cultivation, freedom from restrictive covenants and onerous easements, and the facility with which it may be adapted for small holdings. These are matters for local consideration. But in all cases, whether land is acquired by purchase or on lease, the council must have special regard to the fundamental requirement that the price or rent of the land shall be such that when there is added to it all costs and expenses of acquisition and adaptation, less any sum that may be contributed from the Small Holdings Account under ss. 5 (4) and 17 of the Act of 1907, or by other councils under s. 15, the net total will not be more than can reasonably be expected to be received back from the small holders to whom plots of land will be sold or let. Although the Act of 1907 contains many provisions calculated to reduce the cost of providing holdings, still s. 18 (1) of the Act of 1892 remains to prevent the provision of small holdings being undertaken on a charitable basis, and a council must not acquire land for small holdings save at such price that, in the opinion of the council, all expenses incurred by the council in relation to the land will be recouped out of the purchase-money for the land sold by the

council, or in the case of land let out of the rent, and they must fix the purchase-money or rent at such reasonable amount as will, in their opinion, guard them against loss (see note (a) to s. 18, p. 52, *post*). In this connection the provision of s. 18 (2) should also be referred to, by which not more than a sum equivalent to the produce of a penny rate can be charged on the rates in any one year.

Registration of title.—There is a further fundamental requirement in the case of land acquired by purchase, that all proceedings in connection with the purchase should be conducted with regard to the subsequent compulsory registration by the council of their title to the land under the Land Transfer Acts, (1892, s. 10, and see notes thereto, p. 43, *post*). If the vendor consents to the council applying to be registered as proprietors of the land, no conveyance will be necessary, otherwise the council must take a conveyance in the ordinary way, and then apply to be registered. In any event, a council should have a clause to the following effect inserted in the contract for the purchase of land for small holdings: "This contract is entered into by the council subject to the title deduced being accepted by Conveyancing Counsel, whose appointment by the council has been approved by the registrar of the Land Registry, as being fit for registration by the Land Registry as an absolute title under the Land Transfer Acts, 1875 and 1897, and the rules made thereunder, pursuant to section 10 of the Small Holdings Act, 1892; and in the event of the title not being so accepted this contract shall be deemed to be void *ab initio*, and the deposit shall be repaid to the purchasers. The property is sold free from all restrictive covenants whatsoever."

If the title is a simple one, no difficulty should be experienced in obtaining registration, but in other cases it will facilitate matters if the council at the outset apply to the registrar to approve a Conveyancing Counsel, and then instruct such counsel to draft the requisitions, approve the title, and settle the draft conveyance on their behalf. On completion he should be asked to give a certificate in some such

form as follows: "I hereby certify that the title to the above property having been referred to me, I perused the abstracts, and drew requisitions in respect thereof, and advised on the replies to the requisitions, and drew further requisitions, and advised on the replies thereto. The requisitions and further requisitions were all satisfactorily answered and complied with. I also settled the draft conveyance, which has since been duly executed and the purchase completed. The title is in my opinion a good holding title, and there are no qualifications, incumbrances, conditions, exceptions and other matters affecting it, which ought to be entered on the register," or as the case may require.

Plans and maps.—The land should be described in the conveyance by reference to a plan or map, which should be the twenty-five inch Ordnance Survey, and the boundaries marked thereon with red edging. All "T" marks should be inserted. This plan should be prepared and checked by the council's surveyor, and before it is annexed to the conveyance it should be submitted to and approved by the Land Registry, since it will form the basis for the plans that must be referred to in the transfers to the small holders. Armed with counsel's certificate, an approved map, and adopting the procedure laid down by the Land Registry (Small Holdings) Rules, 1892, (for which see p. 241, *post*), the council should obtain registration without any undue delay. The Land Transfer Rules, 1903 and 1907, should also be referred to for the general practice in the Land Registry.

Procedure on compulsory acquisition of land.—If a council are unable to acquire by agreement, and on reasonable terms, land suitable for the purpose of providing small holdings for persons who desire to lease and will themselves cultivate the holdings, they may prepare and submit to the Board for confirmation, an order authorising them to acquire land compulsorily. Land intended to be sold to small holders cannot be acquired compulsorily (1907, s. 6). The order may be either for purchase or hiring, but no compulsory hiring for less than fourteen nor more than thirty-five years can be

authorised (1907, s. 26). See p. 14, *post*, for restrictions on the compulsory acquisition of land.

The order must be prepared and published by the council, and must be in the form prescribed by regulations to be made by the Board. It must incorporate, subject to the necessary adaptations, the Lands Clauses Acts, and ss. 77 to 85 of the Railways Clauses Consolidation Act, 1845 (for which see Appendix, II. *post*). An order for compulsory hiring must only incorporate such of these provisions as the Board consider necessary or expedient. For the further steps to be taken to obtain an order, and for the matters to be contained in the order, see the First Schedule to the Act of 1907, and ss. 26 (4), and 30 (2) of that Act. When an order has been confirmed by the Board it will have the effect of an Act of Parliament, and the subsequent proceedings will be much the same as in the case of a railway company taking land compulsorily. The Act of 1907 and the order will together constitute the "special Act," and the council will be deemed to be "the promoters." Notices of intention to take the specified land must be served on the owners, occupiers, and all persons interested in the land, and if such persons fail to treat, or there is a dispute as to price or compensation on purchase, the matter will be decided by a single arbitrator appointed by the Board. In the case of a dispute as to rent or compensation on compulsory hiring, the amount will be determined by a single valuer appointed by the Board, except where a tenant claims to have any compensation due to him fixed in accordance with the Agricultural Holdings (England) Acts, 1883 to 1906. If the arbitrator dies before making an award, the proceedings must begin again. An award will be taken up by the council, who will, in general, pay the costs of the arbitration. The arbitrator will not hear counsel or expert witnesses, unless directed so to do by the Board, and he is not to allow the usual ten per cent. addition in respect of compulsory taking.

If after the price, rent, or compensation has been determined, it appears to the council that they cannot let the land

for small holdings at such a rent as will secure the council from loss (see p. 10, *ante*), they may, within six weeks of such determination, withdraw the notice to purchase or hire, as the case may be, on payment of compensation for any loss or expenses sustained or incurred by the owner or occupier or other interested person (1907, s. 26 (8)).

Restrictions on taking land compulsorily.—A council cannot acquire compulsorily any part of a holding of fifty acres or less in extent, nor any land which forms part of any park, garden, or pleasure ground, or of the home farm, or is otherwise required for the amenity or convenience of any dwelling-house, or is woodland not wholly surrounded by or adjacent to other land taken by a council. Nor can they so acquire land belonging to a local authority, or land acquired by a corporation or company for a public undertaking, nor the site of an ancient monument or other object of archæological interest. These are absolute prohibitions; the Act of 1907 also contains other directions for avoiding undue interference with owners, occupiers, and labourers (see ss. 30 and 34).

Adaptation of land.—When a council have obtained the necessary land they may proceed to adapt it for the purposes of small holdings (for their powers in this respect see notes to s. 3 of the Act of 1892), and, subject to rules to be made by them and confirmed by the Board (1892, s. 7; 1907, s. 10), to sell or let the holdings to suitable persons on the terms and conditions prescribed by the Acts (1892, ss. 4, 6, 9; 1907, ss. 6, 7, 9, 11, 12, 13, and see Appendix of Forms).

Power of council to let holdings.—In regard to the power of a council to let land as small holdings, it has been suggested that the Act of 1907 fails in its principal purpose, and that, so it is alleged, it does not confer upon a council any power of letting a holding to an individual small holder. It is argued that s. 7 (p. 72, *post*) only empowers a council to let under and in accordance with the provisions of the Act of 1892, and that that Act does not now contain any power to let, except that by s. 4 (3), p. 32, *post*, a holding may be let to persons working on a co-operative system. The

contention is plausible, but appears to be founded on a supposition that a council requires an express authority to let. The power conferred upon a council to acquire land "for the purpose of providing small holdings for persons who desire to lease" them (see s. 6 (1) of 1907 Act, p. 71, *post*), would seem to be a sufficient authority to the council to let land so acquired, even if the construction put upon s. 7, as mentioned above, is accurate, which may be doubted until it has been endorsed by the Court. The notes in the following pages, so far as they relate to letting by a council, have been written upon the assumption that the Act of 1907 does give effect to the undoubted intention of the legislature that the councils should be empowered to let holdings as well as sell them.

Purchase money.—A purchaser must pay not less than one-fifth of the purchase money on completion, and the remainder by instalments within fifty years; payment of an instalment may be postponed by the council for not more than five years in certain events. The unpaid purchase money may be secured, as to one-fourth of the whole purchase price by a perpetual rent charge, and as to the residue by a charge on the holding (1892, s. 6, see also Appendix of Forms).

Compensation for improvements.—A small holding is an agricultural holding within the meaning of the Agricultural Holdings (England) Acts, 1883 to 1906, and the tenant of a small holding is entitled to the benefits conferred upon tenants by those Acts, except in so far as they are inferentially varied by the Small Holdings Acts or may lawfully be limited by rules made by the council under the latter enactments. Such portions of the Agricultural Holdings Acts as relate most nearly to small holdings are printed in the Appendix, and it does not seem necessary here to attempt any general statement of their provisions.

Compensation to tenants.—So far as compensation to a tenant for improvements is concerned, it will be sufficient to point out that at the termination of his tenancy he will be entitled to compensation for all the usual improvements

under those Acts, and, in addition, to compensation in respect of the planting of standard or other fruit trees, and of fruit bushes, permanently set out, the planting of strawberry plants, and the planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years, if such planting has not been done in defiance of an express prohibition in writing by the council; there is a right of appeal to the Board against any such prohibition (1907, s. 35 (1)). The measure of compensation will be such sum as fairly represents the value of the improvement to an incoming tenant. A tenant may, also, before the expiration of his tenancy remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and may remove any toolhouse, shed, greenhouse, fowlhouse, or pigsty built or acquired by him for which he has no claim for compensation (1892, s. 4).

Compensation to council.—Where a council have hired land for small holdings, they will be entitled at the determination of their tenancy on quitting the land to compensation under the Agricultural Holdings Acts for any of the improvements mentioned above, and for any improvement set out in the note to s. 35 (2), of the Act of 1907 (p. 98, *post*), which was necessary and proper to adapt the land for small holdings, although they did not give notice to or obtain the consent of the landlord before executing such improvement.

In the case of land hired by agreement, the right to compensation may be restricted by the agreement; and in the case of land hired compulsorily, the amount of compensation payable to the council will be such sum as fairly represents the increase (if any) in value to the landlord and his successors in title of the holding due to the improvements (1907, s. 35, (2)).

Depreciation.—On the determination of a tenancy created by compulsory hiring the council will have to pay compensation for any depreciation of the land by reason of any failure on their part, or on the part of their tenants, to observe

the covenants in the lease to cultivate the land in a proper manner, or by reason of any user of the land. The amount will, in default of agreement, be determined by a single arbitrator in accordance with the Agricultural Holdings Acts (1907, Sched. I., Part II. (2), (7), and s. 43).

A council or their tenant must not break up pasture unless expressly authorised, and must not, without the consent of the landlord, fell or cut timber or trees, or take, sell, or carry away minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting it for small holdings. Compensation must be paid for minerals, gravel, sand, or clay so used (1907, Sched. I., Part II. (2)).

A landlord may, in certain events, be entitled to resume possession of land compulsorily hired (1907, s. 33).

Supplemental powers of councils.—In addition to the powers of the council as to providing small holdings, the Acts contain provisions enabling a council to advance money to “sitting tenants” in order that they may purchase their holdings (1892, s. 17), and to promote and assist societies on a co-operative basis having for their object the provision or profitable working of small holdings (1907, s. 39).

THE SMALL HOLDINGS ACT, 1892

(55 & 56 Vict. c. 31).

SECT.

1. Power for county council to acquire land for small holdings.
2. County council may lease land in lieu of purchasing.
[Repealed.]
3. Purchase of land and adaptation of it for small holdings.
4. Sale or letting of small holdings.
5. Committee of and inquiry by council. [Repealed.]
6. Regulations as to purchase money and sale.
7. Rules as to mode and conditions of sale.
8. List to be kept by county council.
9. Conditions affecting small holdings.
10. Registration of title to small holdings.
11. Right of purchase, if land diverted from agriculture.
12. Extension of provisions of 45 & 46 Vict. c. 38.
13. Power to limited owner to sell at a fee farm rent.
14. Power to attach grazing rights, &c., to small holdings.
15. Letting of land unsold and sale of superfluous or unsuitable land.
16. Provisions as to management of holdings. [Repealed.]
17. Power of county council to advance money for purchase of small holding.
18. Restrictions on powers of council.
19. Borrowing powers and expenses.
20. Definitions.
- 21 to 24. Application of Act to Scotland.
25. Extent of Act.
26. Commencement of Act.
27. Short title.

An Act to facilitate the acquisition of Small Agricultural Holdings. [27th June, 1892.

Be it enacted, etc.

PART I.

PROVISION OF SMALL HOLDINGS BY COUNTY COUNCILS.

1. *Power for county council to acquire land for small holdings.*—(1) If the council of any county (*a*) are of opinion that there is such a demand for small holdings (*b*) in their county as justifies them in putting into operation this part of this Act (*c*) the council may, subject to the provisions of this Act, acquire (*d*) any suitable land (*e*) for the purpose of providing small holdings for persons who desire to buy and will themselves cultivate the holdings. (*f*)

(*a*) COUNTY.—The expression “county” means the area under the authority of a county council (s. 20, p. 58, *post*), and, consequently, is practically akin to the expression administrative county used in the Local Government Act, 1888, save that by s. 20 (*post*) of the Small Holdings Act, 1892, it is expressly provided that the expression “county council” shall include the council of a county borough. Under this Act the council of a county were under an obligation to take preliminary steps to ascertain whether there was a demand for small holdings in their county, while the council of a county borough might take such steps if they pleased but were under no obligation to do so. A considerable change, however, has been effected by the Small Holdings Act, 1907, for that Act, though it contains no express directions as to county boroughs, is to be construed with the Act of 1892, in which, as we have seen, the expression county council includes the council of a county borough; and, consequently, when the Act of 1907 imposes, as it does, an obligation upon a “county council” in connection with the provision of small holdings, a like obligation must attach to a council of a county borough.

It must be remembered that throughout these pages the expression “county council” includes the council of a county borough, and the expression “county” a county borough, unless such inclusion is expressly negatived.

(*b*) SMALL HOLDINGS.—The expression “small holding” means an agricultural holding which exceeds one acre, and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale

or letting of an annual value for the purposes of income tax not exceeding fifty pounds (Act of 1907, s. 46 (1), see p. 107, *post*). This definition is substituted for that formerly contained in s. 1 (2) of the Act of 1892 (see p. 23, *post*), which was found to be too narrow and not applicable to all the provisions of the Acts.

The definition, however, is not yet entirely satisfactory, since it leaves open what is meant by an agricultural holding. The Act of 1892 provides by s. 20 (p. 57, *post*) that the expression agriculture shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like, so it may be taken that an agricultural holding is a holding devoted to one or more of these purposes. The definition is also somewhat anomalous as to the limits of the holding, for under it a holding of, *e.g.* forty-nine acres in extent may have an unrestricted annual value, while a holding of fifty-one acres must not have a higher annual value than fifty pounds, in accordance with the income tax valuation. For the method of assessing the annual value of land for income tax purposes, see 5 & 6 Vict. c. 35.

(c) JUSTIFICATION.—A council, in order to be justified in putting the Act of 1892 into operation, must be satisfied that there is such a demand for, and such a likelihood of the land acquired being taken up for, small holdings as will enable them to exercise their powers without entailing any serious loss to the county or borough funds or rates. They must not acquire land except at such a price as will, in their opinion, enable them to recoup the expenses incurred by them out of the moneys to be received from the respective small holders (see s. 18 (1) p. 52, *post*), and in no case must they do anything whereby the charge on the county or borough rate or fund will in any year be likely to exceed the amount produced by a rate of one penny in the pound (see s. 18 (2) p. 53, *post*). In this connection the provisions of the Act of 1907 are of great importance, since now the providing of small holdings is no longer left to the option of the council, and holdings must be provided, in one way or another, for every county and county borough in which there is a demand for them (see also INTRODUCTION, p. 2, *ante*). Under these circumstances it may be better for councils to cease to act on their own initiative in acquiring land for small holdings, and to await the preparation of a scheme under the new Act by the Small Holdings Commissioners and the Board of Agriculture and Fisheries, or to themselves submit a draft scheme for the approval of the Board. The advantage gained by so doing is that where the carrying out of a scheme has resulted, or is likely to result in a loss, the whole or part of such loss may be paid out of the Small Holdings Account created by the recent Act, see s. 5 (4) (p. 70, *post*) of the Act of 1907, and the general provisions of that Act as to schemes thereunder.

(d) ACQUISITION OF LAND.—Under the Act of 1892 the council could only acquire land by voluntary purchase, and in one case (now repealed) by voluntary hiring; under the Act of 1907 land for small holdings may be acquired by agreement or compulsorily, and either by purchase or hiring.

It must be noted, however, that the power of compulsory acquisition only applies where the land is to be let to tenants; where the small holdings are to be sold by the council, the land can only be acquired by agreement. See s. 3 (p. 23, *post*) and also ss. 6 (p. 71, *post*) and 26 (p. 82, *post*) of the Act of 1907, and the INTRODUCTION, p. 9, *ante*.

Land for conversion into small holdings can only be acquired under the provisions of the Small Holdings Acts; a county council, for instance, cannot acquire land for small holdings under the general power to acquire lands conferred by s. 65 of the Local Government Act, 1888, nor can land acquired for other purposes be appropriated for small holdings, except in the case provided for by s. 32 of the Act of 1907, p. 94, *post*.

(e) LAND.—The expression land includes any right or easement in or over land (s. 20, p. 58, *post*). Where any right of grazing, sheep-walk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient (s. 14, p. 48, *post*); and the powers to acquire land include power to acquire it for the purpose of attaching grazing rights and other similar rights to the small holdings, and power to acquire for that purpose stints and other alienable common rights of grazing (see Act of 1907, s. 31 (1), p. 93, *post*).

Land of any tenure may be acquired, though if copyhold or customary freehold land is purchased it must be converted into freehold by enfranchisement. See note (a) to s. 10, p. 43, *post*.

Any expenses incurred by a council in the enfranchisement of land acquired by them will be deemed to have been incurred in the purchase of the land (Act of 1907, s. 46 (3), p. 108, *post*).

(f) IN GENERAL.—The principle underlying the Small Holdings Act, 1892, was that assistance should be given to persons desiring to own small tracts of land, and to personally cultivate such land. Accordingly, the Act provided machinery whereby land might be acquired for sale to such persons. A limited power of letting land was given, but this is now abrogated by the Small Holdings Act, 1907, which gives much greater facilities for the acquisition of land for letting than were originally given for the acquisition of land to be sold, without equally extending the original facilities. The consequence is that land intended to be sold as small holdings can only be purchased by agreement, while land intended to be let to tenants may

be purchased or taken on lease by agreement or compulsorily. See note (d) *ante*, and the references there given.

In the case of a purchase by agreement from an owner in fee simple, the conveyance of the land will present no difficulty, save such as may be raised in order to procure a title fit for registration under s. 10 (p. 43, *post*); if the vendor is a tenant in tail the conveyance must be enrolled pursuant to 3 & 4 Will. 4, c. 74. With regard to sales by tenants-for-life and other limited owners, see ss. 12 and 13 (p. 47, *post*) and the provisions of the Lands Clauses Consolidation Act, 1845, referred to in note (a) to s. 8 (1) (p. 24, *post*), and as to their power of leasing land, see ss. 28 and 29 of the Act of 1907 (pp. 90, 91, *post*).

For restrictions on the powers of a council see s. 18 (p. 52, *post*), and s. 30 of the Act of 1907 (p. 92, *post*). The prospective small holders need not necessarily be residents in the county or borough, though a council in considering the extent of the demand for small holdings will not be likely to look beyond the requirements of their own area. A woman may be a small holder (Interpretation Act, 1889, s. 1 (1)).

(2) *The expression "small holding" for the purposes of this Act shall mean land acquired by a council under the powers and for the purposes of this Act, and which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is of an annual value for the purposes of the income tax not exceeding fifty pounds.*

This sub-section was repealed by the Act of 1907, which, by s. 46 (1), (see p. 107, *post*), substitutes a new definition of the expression "small holding." See also note (b) on p. 20, *ante*.

2. *County council may lease land in lieu of purchasing.—Where land through its proximity to a town or suitability for building purposes, or for any other special reason has a prospective value which in the opinion of the county council is too high to make its purchase for agricultural purposes desirable, the council may hire the land on lease or otherwise for the purpose of letting it in small holdings in accordance with the provisions of this Act.*

Section 2 was repealed by the Act of 1907, which, by s. 6 (1) (p. 71, *post*), confers upon a county council a general power of taking land on lease for the purpose of providing small holdings.

3. *Purchase of land and adaptation of it for small*

holdings.—(1) For the purpose of the purchase of land under this Act by a county council the Lands Clauses Acts (a) shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, which provisions shall not apply for the purposes of this Act; (b) and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the county council were referred to therein. (c)

(a) **LANDS CLAUSES ACTS.**—The expression “Lands Clauses Acts” means, as respects England and Wales, the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), the Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18), and the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), and any Acts for the time being in force amending the same (Interpretation Act, 1889, s. 23). More recent Acts included in the expression are the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), and possibly, s. 22 of the Commons Act, 1899 (62 & 63 Vict. c. 30), though the last-named is not relevant to the subject of Small Holdings. The various Lands Clauses Acts, so far as they appear to be relevant to the subject of small holdings, are printed in the Appendix. The sections of the Act of 1845 applicable to a purchase by agreement, which is the only method contemplated by the above subsection, would appear to be ss. 6 to 15, which relate to the purchase of land by agreement, 69 to 83, application of purchase money and compensation, 84 to 92, entry upon purchased lands, 93 and 94, intersected lands, 95 to 98, as to copyholds, 99 to 107, as to common lands, 108 to 118, lands subject to incumbrances, 119 to 123, lands subject to leases, 124 to 126, as to omitted interests in lands, and 127 to 132, which relate to the sale of superfluous lands.

(b) **COMPULSORY PURCHASE.**—As the Small Holdings Act, 1907, enables land to be acquired compulsorily, it provides for the incorporation in any order made for compulsory purchase of the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement (see s. 26, p. 82, *post*, and Sched. I., p. 109, *post*).

(c) **PUBLIC HEALTH ACT, 1875, s. 178.**—The incorporation of s. 178 of the Public Health Act, 1875, enables the Chancellor and Council of the Duchy of Lancaster to sell Duchy lands to a council for the purposes of small holdings. The section provides as follows:—

The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice

to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors in right of the said duchy, or any right, interest, or easement, in, through, over, or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

For the voluntary leasing of Crown and Duchy lands, see s. 28 (2) of the Act of 1907, p. 90, *post*.

(2) The county council may, if they think fit, before sale or letting, adapt for small holdings any land acquired under this Act by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can in the opinion of the council be more economically and efficiently executed for the land as a whole. (a)

(a) ADAPTATION.—When a council have acquired land for small holdings they may proceed to execute, as regards the land as a whole, such works as are necessary to render the land fit for occupation as small holdings, or, if they prefer, they may proceed to sell or let the land in the same condition as they acquired it, and leave to the individual purchasers or tenants the work of adapting the land. As in most cases, however, a council will acquire at one time land sufficient for several holdings, it will be necessary for them to divide the land into holdings of different acreages according to the demand, and much of the work, such as road-making, drainage, and water-supply, will certainly be more economically and probably more efficiently done, before any such division takes place. The power of adaptation conferred by the above subsection extended originally only to land acquired by agreement, but by virtue of the Act of 1907 it now extends to land however acquired, and the council are expressly enabled to adapt for letting land which they have purchased, instead of being restricted, as they were under the Act of 1892, to adapting for letting only land which they had acquired by hiring under the repealed s. 2 of that Act.

A council will, therefore, after acquiring land, proceed, either by themselves or by their committee (see Act of 1907, s. 36, p. 99, *post*), to divide the land into holdings of a size, or of different sizes, suitable to the local requirements; next, they will decide what rights of way or other rights in the nature of easements they will subject a holding to, for the benefit of the other holdings (see s. 6 (7), p. 37, *post*), and whether they will apportion any grazing or similar rights over the land (see s. 14, p. 48, *post*), or over other land acquired for the purpose of providing grazing rights (Act of 1907, s. 31, p. 98, *post*). Then will come the provision of boundary fences, the making of occupation roads, drainage works, water supply, and the like, provided that the council consider such matters can be done by them more cheaply and better than by leaving their execution to the respective small holders. But the whole of these matters are in the sole discretion of the council, and it may be that they will content themselves with providing only such principal fences or marks of delimitation as are absolutely necessary, and will require the small holders to erect and maintain sufficient fences to separate the holdings one from the other. In such a case a question may arise as to how an obligation to fence may be imposed upon the small holder, his successors, and assigns, and a like question will arise in connection with the burden of any restrictive covenants which may be imposed running with the land, so as to bind all successive owners until the full expiration of the period during which the land is to be subject to the Small Holdings Acts (see s. 9 of the 1892 Act, p. 39, *post*). As a general rule the burden of a covenant will not run with the land, except as between lessor and lessee, and accordingly a covenant by a purchaser of a small holding to erect and keep up fences or to erect buildings on the holding will not bind a purchaser from him. But a covenant of a negative nature will bind a purchaser with notice, who may be restrained from using the land contrary to the covenant. The original small holder, however, will be liable upon his covenants, and as the holding cannot be assigned without the consent of the council (s. 9 (1) (b), p. 39, *post*), the benefit of the covenants may be preserved by the council withholding consent, except upon the condition that the purchaser from the small holder shall directly covenant with the council to perform all the covenants and conditions in the original grant or transfer.

The council should, therefore, insert in any transfer to a purchasing small holder a covenant by the purchaser in some such terms as follows: The registered proprietor for himself, his heirs, executors, administrators, and assigns, hereby covenants with the county council, their successors, and assigns that he will when called upon by the county council erect and maintain a fence to the satisfaction of the county council on the [*describe place and line of fence*] of the small holding hereby transferred to separate it from the adjacent small holding, Nos.

The form of Statutory Transfer appended to the Land Registry (Small Holdings) Rules, 1892 (see p. 249, *post*), does not contain any reference to covenants or conditions, but there seems to be no reason why proper provisions of this nature should not appear on the transfer and be noted on the register at the Land Registry. In the precedent of a transfer to a small holder given at p. 125, *post*, certain covenants have been inserted. Section 6 (7) (p. 37, *post*), of the Small Holdings Act, 1892, enables an holding to be sold subject to such rights for the benefit of other small holdings as the council consider necessary or expedient, and s. 10 of the same Act (p. 48, *post*) provides that land purchased under the Act must be registered under the Land Transfer Acts. It would appear, therefore, to be a reasonable consequence that the registrar ought to insert on the register notice of those rights, and it is submitted that necessary provisions as to fences, roads, etc., come under the category of rights. It may be observed that an opinion to this effect was given by Mr. Cozens Hardy, Q.C. (now the Master of the Rolls), many years ago, and that the Land Registry has accepted transfers containing such covenants. It will be advisable, however, if any other than the statutory form of transfer is adopted, to submit a draft of the proposed document to the Land Registry for approval before it is executed.

(3) The county council may also, if they think fit, as part of the agreement for the sale or letting of a small holding, adapt the land for a small holding by erecting thereon such buildings, or making such adaptations of existing buildings, as in their opinion are required for the due occupation of the holding, and cannot be made by the purchaser or tenant. (a)

(a) ERECTION OF BUILDINGS.—The condition precedent that the council shall be of opinion that any erection or adaptation of buildings “cannot be made by the purchaser or tenant,” must be restricted to the presumption that the necessary work is beyond the means of the latter. If he is financially in a position to build or adapt, he must do the work himself, otherwise the council may do it and add the cost to the price or rent of the holding. Any expenses incurred in building must be debited to the particular holding, and cannot be apportioned under s. 4 (*infra*).

As regards the erection of dwelling-houses on holdings, see s. 9 (1), p. 39, and s. 11 of the Act of 1907 (p. 75, *post*).

The power to build can only be exercised as regards a particular holding which has been either sold or let to a small holder. There is no power to build generally on acquired land, or to build on a particular holding before that holding has been sold or let. The re-

quirement of subsection (3) that a council can only build on a holding "as part of the agreement for the sale or letting of a small holding," has been found in practice to somewhat fetter a council in making their small holdings a success. After a man has acquired a holding it may well be that he finds that for its proper and profitable user he must have some building, say a stable, placed thereon, or he may wish to reside on the holding and to erect a house with suitable out-buildings. A small holder is, from the nature of things, not blessed with much capital, and the conditions attached to his tenure make it almost impossible for him to raise money in the ordinary way on the security of his holdings (see ss. 6 & 9, *post*). It would, therefore, be a most useful complement to the powers of a council to provide for the advance by a council to a small holder of the money necessary to enable him to build on the holding. In Worcestershire such advances have been made by the council with gratifying success. The small holdings in that county have hitherto been sold only, and in each transfer to a purchaser the council reserve to themselves power to make arrangements under s. 3 (3) of the Act of 1892 as part of the agreement for the sale of the small holding. I am indebted to Mr. S. Thornely, the clerk to the Worcestershire County Council, for the following particulars as to the manner in which the advances are made, and for the forms in use thereunder, which are printed in the Appendix. The county council adopted a building scheme, which provides :—

(a) That the council may advance not exceeding three-fourths of the actual cost of building a house and suitable out-buildings.

(b) Applications for an advance should be made upon forms, and the applicant must satisfy the council that he is in a position to provide his fourth of the estimated cost of erecting the house, out-buildings, and necessary sanitary arrangements. The applicant, in his application, must name the architect or builder who will prepare plans and be responsible for the proper erection of the buildings.

(c) On receipt of the application the matter will be referred to the council's surveyor, who shall report upon it, giving the following information :—

- (1) Name of applicant.
- (2) Amount of loan required.
- (3) In what manner has the small holding been cultivated ?
- (4) What amount has been expended thereon ?
- (5) Age of applicant. Is he married ? What family, if any, has he ?
- (6) Is the small holding suitable for buildings ?
- (7) Has the money already laid out added to the value of the holding ?
- (8) The present value of the holding.
- (9) The estimated value when the buildings are erected.

(10) The site of the proposed building.

(11) Any other remarks and matters that should be brought to the notice of the council.

(d) Assuming the surveyor's report satisfactory, the applicant must have paid the one-fifth of the purchase money of the land and all instalments up to and including the half-year prior to the date of the application before the matter can proceed.

(e) The applicant shall, on the clerk intimating to the applicant that these preliminaries have been complied with and the matter is in order, furnish to the clerk of the council a plan showing the ground plan, elevation, together with specification and form of tender for the proposed building. These shall be submitted to the county surveyor and the county medical officer.

(f) The applicant shall agree to observe, whenever required, the Model Building By-Laws of the Local Government Board.

(g) If either party require it, the documents prepared by the clerk of the council shall be approved by an independent solicitor on behalf of the applicant.

(h) The advances will be made in such sums as may be agreed, which will be payable on the certificate of the county surveyor.

(i) The surveyor shall make a half-yearly report as to :—

(i) The state and cultivation of each small holding ;

(ii) Whether the covenants entered into by each small holder have been strictly complied with ; and

(iii) Where a house and buildings have been erected, whether they are in good tenantable repair.

(j) Any advance by the council for building shall be repaid by instalments spread over a period not exceeding the remainder of the term in respect of which the balance of the purchase money of the small holding is payable.

(k) All buildings erected by a small holder, with or without financial aid from the council, must be maintained to their satisfaction.

(l) All insurances should be effected by the county council, and it should be the duty of the county surveyor to report annually what is the proper amount in which to insure any buildings, and the clerk of the county council should be responsible that the buildings are kept insured in the amounts so reported.

(m) A form of contract and bond will be prepared by the clerk of the council, and the small holder will be required to enter into them previous to any advance being made.

(n) Applications for advances must be made so that they are received by the clerk of the council not later than the 1st of February in each year. Every application will be dealt with on its merits.

A small holder desiring to build on his holding under such a scheme as this will employ his own architect, who will prepare all

the necessary plans and drawings and a specification of the work. These will be submitted to the county council, who will have them approved or modified by the county surveyor or some other person appointed by them for that purpose. The small holder or his architect will then select the builder, who will be required to enter into a contract, and a bond with a surety, for the due performance of the work at the agreed price. It will be found advisable for the county council to prepare these forms and provide prints thereof for use in each case where they are advancing money for building purposes. The council agrees to advance a certain amount—in the case of Worcestershire up to three-fourths—of the contract price, which is advanced from time to time by the county treasurer on the certificates of the county surveyor. The small holder has to find the remainder of the contract price, which he will generally be able to considerably reduce by himself doing the hauling, and is required to execute a deed of charge on his holding for the amount advanced (see form in Appendix, p. 127, *post*) by the council, which should be repayable in the same way and within the same period as the balance of the purchase money of his holding. The interest charged by the council on the advance should be at such a rate as to leave a margin to cover insurance, the incidental expenses, and any external repairs or painting that the council may agree to do during the continuance of the charge. All internal repairs and painting should be done by the small holder. It has been found in Worcestershire that under this system a small holder can erect a good house, with all necessary outbuildings, including stable, tool-house, and pigstyes, for about £300, excluding haulage; and under the extended power given by the Act of 1907 (see s. 11, p. 75, *post*) of building more than one house on a holding, it will probably be possible to build at still less cost.

4. *Sale or letting of small holdings.*—(1) The county council shall apportion the total cost of the acquisition of the land, and of any adaptation thereof, (a) among the several holdings in such manner as seems just, and shall, save as hereinafter mentioned, (b) offer the small holdings for sale (c) in accordance with rules under this Act. (d)

(a) TOTAL COST.—As to what constitutes the total cost, see subsection (4), p. 82, *post*.

(b) SAVE AS HEREINAFTER MENTIONED.—These words refer to the repealed provisions of subsection (2), *infra*.

(c) SALE.—Small holdings may now be let to tenants (Act of 1907, s. 7, p. 72, *post*).

(d) RULES.—As to power of the council to make rules, see s. 7 (p. 37, *post*).

IN GENERAL.—The council must endeavour not to sell or let at a loss, that is, they must adjust the price of the holdings offered for sale, and the rent of those offered to tenants, so as to cover all the expenses they have incurred in respect of acquiring and adapting the lands. Presumably, too, as the object of the Acts is to facilitate the acquisition of small holdings, a council ought not to fix prices or rents at a higher figure than is necessary to cover the total cost; in other words, the council should not aim at making a profit, though, other things being equal, there seems to be nothing to prevent them selling or letting to the applicant who will make the highest bid for a holding, so long as such bid is not a less sum than the apportioned cost. And in regard to particular holdings, the council may, if it is submitted, sell or let at a price more than sufficient to cover the sum apportioned to that holding of the total cost incurred in respect of the holdings generally. A profit, for example, on one holding may be set off as against a loss on another holding. See further hereon notes to ss. 7 and 18, pp. 37 and 52, *post*.

In order that the net cost to a council of providing and adapting land for holdings may be reduced to as low a figure as possible, the Act of 1907 contains several provisions enabling the Board of Agriculture and Fisheries to come to the assistance of a council with contributions from the Small Holdings Account created by that Act, see ss. 5 (4) and 17 of that Act (pp. 70 and 79, *post*), and also s. 15 p. 78, *post*), which enables borough and urban district councils in certain cases to contribute the whole or part of a loss.

(2) [*Where the county council are of opinion that any persons desirous of themselves cultivating small holdings are unable to buy, on the terms fixed by this Act, or where the land has been hired by the council on lease or otherwise, the council may, in the case of any small holding which either does not exceed fifteen acres in extent, or if exceeding fifteen acres is of the annual value for the purpose of the income tax not exceeding fifteen pounds, instead of offering it for sale, offer to let it in accordance with rules under this Act.* (a)]

Provided that] a tenant of any small holding may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and remove any toolhouse, shed, greenhouse, fowlhouse, or pigsty built or acquired by him for which he has no claim for compensation. (b)

(a) The words in italics and within brackets were repealed by the

Act of 1907, which enables any land acquired by a council for the purpose of small holdings to be either sold or let (see section 6, p. 71, *post*).

(b) This provision is now rather out of place. As to a tenant's right to compensation, see section 35 of the Act of 1907 and notes thereto (p. 96, *post*), where this provision is further considered.

(3) The county council shall have power to sell, or [*in the case of small holdings which may be let*] to let one or more small holdings to a number of persons working on a co-operative system, provided such system be approved by the county council.

The words in italics were repealed by the Act of 1907. In addition to the above power of selling or letting small holdings to persons working on a co-operative system, a county council may, with the consent of the Board of Agriculture and Fisheries, let one or more holdings to any association formed for the purposes of creating or promoting the creation of small holdings, which is so constituted that the division of profits amongst the members of the association is prohibited or restricted (Act of 1907, s. 9, p. 78, *post*; as to these associations see also s. 39 of that Act, p. 108, *post*).

(4) The cost of acquisition and adaptation shall for the purposes of this section include every expense incurred by the council in relation to the land, inclusive of any allowance to any officers of the council for work done in relation thereto. (a)

(a) Costs.—The cost of acquisition and adaptation of land will include, besides the special matters referred to in s. 3 (p. 28, *ante*), and in this subsection, such items as the price of the land, including compensation to any owner and tenant who may be deprived of his land, or to any other persons interested therein, or to any labourers adversely affected (see s. 34 of Act of 1907 p. 96, *post*); the costs of conveyance or lease to the council, and of registering their title under the Land Transfer Acts; of acquiring or apportioning grazing and similar rights; of enfranchising land or redeeming charges under s. 46 (3) of the Act of 1907 (p. 108, *post*); of borrowing money in order to pay for land, etc.; any expenses incurred by the Small Holdings Commissioners under ss. 5 and 18 of the Act of 1907; and, possibly, any loss or expense connected with the sale of superfluous or unsuitable land, if such loss or expense has been ascertained before the apportionment is made. From the gross cost must be deducted any sum repaid to the council by the Board of Agriculture and

Fisheries under the power conferred by s. 17 of the Act of 1907 (see p. 79, *post*).

5. Committee of and inquiry by council.—(1) *Any county council may, and every county council not being a council of a county borough shall, appoint a committee to consider whether the circumstances of the county justify the council in putting into operation this Part of this Act.*

(2) *Any one or more county electors may present a petition to the council of their county alleging that there is a demand for small holdings in the county, and praying that this part of this Act may be put in operation, and thereupon the petition shall be referred to the committee appointed under this section, who, on being satisfied that the petition is presented in good faith and on reasonable grounds, shall forthwith cause an inquiry into the circumstances to be made and shall report the result to the council.*

(3) *If any councillor representing or alderman residing in any electoral division of a county in which it is alleged that there is a demand for small holdings is not a member of the committee, he shall be added to the committee for the consideration of the alleged demand. (a)*

(a) The above section was repealed by the Act of 1907, which provides a wholly new machinery for ascertaining and meeting any demand for small holdings, the provision of which is no longer dependent upon the action of a county council or the council of a county borough. The procedure by petition from county electors or burgesses is abolished, and a council must either provide small holdings upon its own initiative, or at the instigation of the Board of Agriculture and Fisheries and the Small Holdings Commissioners (see p. 60, *post*), or they will run the risk of seeing their powers in this respect transferred to and exercised by the Commissioners. As to such transfer, see p. 69, *post*.

Every county council and every council of a county borough *must* establish a Small Holdings and Allotments Committee. See s. 36 of the Act of 1907, p. 99, *post*.

6. Regulations as to purchase money and sale.—(1) The purchase money for each small holding sold by the county council shall include the costs of registration of title, (a) but

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shall not include any expense incurred by the purchaser for legal or other advice or assistance. (b)

(a) **REGISTRATION OF TITLE.**—The costs here mentioned are the costs of registering the purchasing small holder as proprietor. The cost of registering the title of the council is part of the cost of the acquisition of land, which must be included in the total cost to be apportioned under s. 4, p. 30, *ante*. As to registration of title, see s. 10 (p. 43, *post*).

(b) **LEGAL ADVICE.**—In practice it is often customary to give the small holder a free conveyance so far as legal advice is concerned; the work being done for the man by the county solicitor free of charge, except for stamps and other out-of-pocket expenses, which the purchaser pays.

(2) Every purchaser shall, within such time, not less than one month after the purchase, as is fixed by rules under this Act, complete the purchase. (a)

(a) **COMPLETION OF PURCHASE.**—One month means one calendar month. For rules under the Act see s. 7 (p. 37, *post*) and notes thereon. The rules are to be made by each council concerned, not by the Board of Agriculture and Fisheries. On completion the purchaser must be registered as owner in accordance with the provisions of the Land Transfer Acts and Rules. A form of statutory transfer is given in the Appendix, p. 249, *post*.

(3) On such completion he shall pay not less than one-fifth of the purchase money. (a)

(a) **PAYMENT OF PURCHASE MONEY.**—It will often be found in practice that a person eligible in all other respects as a small holder is unable to provide for payment of one-fifth or more of the purchase money at once. In order to get over any difficulty in this respect, it may be arranged that the would-be purchaser shall, instead of entering into a contract for purchase outright, agree with the council to become tenant of the holding until the prescribed one-fifth or other larger proportion of the purchase money has been fully paid, such payment to be made by instalments. When the sum has been fully paid the tenancy will cease and the purchase will be completed.

The power given by subsection (6), see p. 37, *post*, enabling a council to postpone payment of an instalment does not extend to the payment to be made on completion.

(4) A portion representing not more than one-fourth of the purchase money may, if the county council think fit, be

secured by a perpetual rent charge (a) which shall be redeemable in manner directed by section forty-five of the Conveyancing and Law of Property Act, 1881, with respect to rent charges to which that section applies. (b)

(a) RENT CHARGE.—A precedent of a statutory perpetual rent charge to secure part of the purchase money of a small holding is given at p. 250, *post*. The instrument will require an *ad val.* stamp of 2s. 6d. for every £5 or part of £5 of the rent charge, but not in any case exceeding 10s. See Stamp Act, 1891, s. 56 (4).

With regard to such a rent charge, s. 44 of the Conveyancing and Law of Property Act, 1881, should also be referred to; this section renders it unnecessary to expressly reserve powers of entry and distress. See also rule 38 of the Land Registry (Small Holdings) Rules, 1892, on p. 246, *post*.

(b) CONVEYANCING ACT, 1891, s. 45.—S. 45 of the Conveyancing and Law of Property Act, 1881, so far as applicable to small holdings, provides as follows :—

“(1) Where there is a quitrent, chiefrent, rent charge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the commissioners.

(3) On proof to the commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the commissioners.”

The functions of the Copyhold Commissioners are now vested in and exercised by the Board of Agriculture and Fisheries, by the combined operation of the Settled Land Act, 1892, and the Board of Agriculture Act, 1889.

The Act contains no provision as to how the amount of the rent charge is to be computed, but the number of years' purchase that the Board of Agriculture and Fisheries will consider proper should be ascertained, and the rent charge fixed at such a sum as will, if it be

redeemed under the power given by the incorporated s. 45 of the Conveyancing Act, 1881, ensure the return to the county council of the exact proportion of the purchase money secured by the charge.

(5) The residue (if any) of the purchase money shall be secured by a charge on the holding in favour of the council, and shall either be repaid by half-yearly instalments of principal with such interest, and within such term not exceeding fifty years from the date of the sale, as may be agreed on with the council, or shall if the purchaser so requires, be repaid with such interest and within such term as aforesaid by a terminable annuity payable by equal half-yearly instalments. (a) The amount for the time being unpaid may at any time be discharged, and any such terminable annuity may at any time be redeemed, in accordance with tables fixed by the county council. (b)

(a) CHARGE.—A precedent of a statutory charge repayable by half-yearly instalments is given at p. 250, *post*, and of a statutory terminable annuity at p. 251, *post*. The stamps required on these instruments will be *ad val.*, as on a mortgage, but in no case exceeding ten shillings. For the implied powers of sale, distress, etc., reference should be made to ss. 19, 20, and 44 of the Conveyancing and Law of Property Act, 1881, and to rule 38 of the Land Registry (Small Holdings) Rules, 1892 (see p. 246, *post*).

The difference between payment by half-yearly instalments or by terminable annuity, is that under the first system the amount payable decreases with every instalment; the instalment of principal remains fixed, but the interest grows less with every payment; when payment is by terminable annuity the amount due each half-year remains the same till the full sum secured has been paid.

The interest charged should not be at a rate much in excess of that at which the council can borrow the money. For borrowing powers of a council see s. 19, p. 53, *post*, and s. 14 of the Act of 1907, see p. 76, *post*.

(b) It seems to be rather unnecessary to require a county council to fix redemption tables, which would involve the preparation of a mass of figures and calculations, and, presumably, their incorporation in rules to be made under section 7 of the Act. No council has, it is believed, fixed such tables, and it will probably be sufficient, when any question of the redemption of a terminable annuity arises, to adopt the figures of any of the standard works on the repayment or the redemption of annuities, such as ARCHER'S or INWOOD'S; or an even better, and certainly an easier way out of the difficulty, will

be for a council to make a rule, under s. 7, *post*, to the following effect:—

“The amount for the time being unpaid in respect of the purchase money of a small holding may be discharged, and any terminable annuity may at any time be redeemed, in the following manner: the owner of the small holding shall be debited in account with the capital amount of the unpaid purchase money, and with the interest accruing due each half year on the amount of such capital remaining from time to time unpaid, and he shall be credited with the amount of any annuity or other payments made by him with half-yearly rests: the money to be paid on redemption shall be the balance shown by any such account.” For the form of such an account, see Appendix, p. 138, *post*.

(6) The council may, if they think fit, agree to postpone for a term not exceeding five years the time for payment of all or any part of an instalment either of principal or interest or of a terminable annuity (*a*) in consideration of expenditure by the purchaser which, in the opinion of the council, increases the value of the holding, but shall do so on such terms as will, in their opinion, prevent them from incurring any loss. (*b*)

(*a*) POSTPONEMENT.—This power only extends to postponement of payment of a secured instalment, whether by charge or terminable annuity. A council cannot postpone payment of the amount payable upon completion of the purchase, but see note (*a*), to sub-s. (3), p. 34, *ante*. The sub-section provides an indirect way of making a loan to a small holder for the purpose of improving the holding.

(*b*) INCREASING VALUE.—The power to postpone payment is in the discretion of the council, but can only be made where the purchaser has expended or agrees to expend money on improvements, which, it is submitted, should be of a permanent nature.

(7) A small holding may be sold subject to such rights of way or other rights for the benefit of other small holdings as the council consider necessary or expedient. (*a*)

(*a*) EASEMENTS.—A holding sold will, of course, also be subject to any right or easement affecting the land in the hands of the council and in respect of which they have been unable to obtain a release or discharge.

7. *Rules as to mode and conditions of sale.*—Every county council acquiring land under this Act shall make rules for

carrying into effect this Act, except as otherwise provided, and in particular—

- (a) as to the manner in which holdings are to be sold or let or offered for sale or letting; and
- (b) as to the notice to be given of the offer for sale or letting; and
- (c) for guarding against any small holding being let or sold to a person who is unable to cultivate it properly, and otherwise for securing the proper cultivation of a holding. (a)

(a) RULES.—This provision as to making rules is extended by s. 10 of the Act of 1907 (p 74, *post*), which provides that—

- “(1) The power to make the rules conferred on a county council by s. 7 of the Small Holdings Act, 1892, shall, subject to the provisions of that Act, extend to the making of rules prescribing the terms and conditions on or subject to which small holdings are to be sold or let by the county council.
- “(2) All rules made under the said section as so extended shall be subject to confirmation by the Board,” that is, the Board of Agriculture and Fisheries.

Precedents of Rules will be found at p. 119, *post*. It must be noticed that Rules made subsequent to December 31, 1907, require to be confirmed by the Board; no confirmation was required for Rules made under the Act of 1892.

A county council cannot make rules under these sections in relation to matters that are expressly provided for in the Acts, *e.g.*, the council cannot make a rule fettering their power (under s. 6 (6)) to postpone the time for payment of an instalment of purchase money, nor can they by any rule abrogate generally compliance with the conditions prescribed by s. 9 (p. 39, *post*), though under sub-s. (6) of that section, they may, in special circumstances, consent to a holding being freed from such conditions. In order to as far as possible guard the council against loss, it may be advisable to make a rule providing that the rent of a holding let shall be payable in advance.

8. *List to be kept by county council.*—Every county council shall keep a list of the owners and occupiers of small holdings sold or let by them, and a map or plan showing the size, boundaries, and situation of each small holding so sold or let. (a)

(a) LIST AND MAP.—The list and map which the council are bound to keep should be in the custody of the clerk of the council,

the town clerk, or some other officer of the council, and should be made available for inspection by any person interested, either on payment of a small fee or free of charge, as the council may prescribe. The holdings should be numbered in the list and on the map for convenience of reference and identification.

9. Conditions affecting small holdings.—(1) Every small holding sold by a county council under this Act (*a*) shall for a term of twenty years from the date of the sale, and thereafter so long as any part of the purchase money remains unpaid, be held subject to the following conditions (*b*):—

- (*a*) That any periodical payments due in respect of the purchase money shall be duly made (*c*);
- (*b*) That the holding shall not be divided, subdivided assigned, let, or sublet without the consent of the county council (*d*);
- (*c*) That the holding shall be cultivated by the owner or occupier as the case may be, and shall not be used for any purpose other than agriculture (*e*);
- (*d*) That not more than one dwelling-house shall be erected on the holding (*f*);
- (*e*) That any dwelling-house erected on the holding shall comply with such requirements as the county council may impose for securing healthiness and freedom from overcrowding (*g*);
- (*f*) That no dwelling-house or building on the holding shall be used for the sale of intoxicating liquors (*h*);
- (*g*) In the case of any holding on which, in the opinion of the county council, a dwelling-house ought not to be erected, that no dwelling-house shall be erected on the holding without the consent of the county council.

(*a*) **EXTENSION OF ACT.**—The provisions of this section apply to small holdings sold under the Act of 1892, as extended and amended by the Act of 1907.

(*b*) **CONDITIONS.**—The object of these conditions, which apply in their entirety only where a holding is sold by a council (for conditions on letting see sub-s. (7), p. 43, *post*), is not only to provide for the maintenance of the council's security for unpaid purchase money, but also to ensure that for at least twenty years the land shall be

cultivated and used as a small holding, unless the county council expressly consents to the land being used in any other manner. As to such consent see sub-s. (6), p. 42, *post*.

(c) PERIODICAL PAYMENTS.—Condition (a) must be read in conjunction with s. 6 (6), p. 37, *ante*, by which a council may agree to payments being postponed in certain cases.

(d) ASSIGNMENT.—A small holder can neither sell nor let the holding or any part of it without the consent of the council. He may, possibly, mortgage it, but the security will be so restricted that money is hardly likely to be advanced on it. Any mortgage would be subject to the prior claims of the council in respect of unpaid purchase money and interest; and if a mortgagee entered into possession there would be a forfeiture by reason of a breach of condition (c), unless, indeed, the mortgagee himself cultivates the holding. As to disposition by will, see sub-s. (3), p. 41, *post*. As to letting a holding to an "association" see s. 9 of the 1907 Act and note thereto, p. 73, *post*.

(e) AGRICULTURE.—The expressions "agriculture" and "cultivation" are defined by s. 20 (p. 57, *post*) as including horticulture and the use of land for any purpose of husbandry, inclusive of the keeping and breeding of live stock, poultry, and bees, and the growth of fruit, vegetables and the like. It has been considered that keeping land in grass for pasture is not agriculture (see *per* Stephen, J., in *Morley v. Jones*, 32 S. J. 630); but the above definition is quite wide enough to permit a small holder to use his holding as pastoral only.

(f) DWELLING HOUSE.—The council may relax this condition if they consider such relaxation to be for the benefit of that or adjacent small holdings provided by them (Act of 1907, s. 11, p. 75, *post*). The object of relaxation is to enable semi-detached houses, or even several houses, to be erected together for the service of neighbouring holdings. But only one dwelling-house may be authorised for occupation with any one small holding.

As regards the erection of other buildings on small holdings, see s. 3 (3) and note thereto, p. 27, *ante*.

(g) The requirements imposed by the council cannot derogate from the effect of any local byelaws as to buildings or sanitation (see sub-sec. 8, p. 43, *post*).

(h) INTOXICATING LIQUORS.—"Used" would probably be held to mean habitually used, or used for the purpose of trading in intoxicating liquors; a mere casual and isolated sale, as a favour or an act of friendship, would hardly be a breach of the condition; which, too, it is submitted, will not prevent a small holding being used as an orchard, and cider and perry being made and sold in bulk. The prohibition will cover sales under the so-called grocer's licence.

(2) If any such condition is broken, the council may,

after giving the owner an opportunity of remedying the breach, if it is capable of remedy, cause the holding to be sold (a).

(a) SALE ON BREACH OF CONDITION.—The sale will be by the council, who have power to transfer the land, and the transferee will be registered at the Land Registry as proprietor of the holding, without any evidence being furnished or required as to the breach giving rise to the power of sale. The instrument of transfer must be in the prescribed form, for which see p. 251, *post* (Land Registry (Small Holdings) Rules, 1892, rules 22–24, *post*).

The council may, however, instead of causing the holding to be sold to a third person, require it to be sold to themselves. As to this power, see s. 12 (1) of the Act of 1907, p. 75, *post*.

(3) If on the decease of the owner while the holding is subject to the conditions imposed by this section, the holding would, by reason of any devise, bequest, intestacy, or otherwise, become subdivided, the council may require the holding to be sold within twelve months after such decease to some one person, and if default is made in so selling the holding, the council may cause the holding to be sold (a).

(a) DEVISE OF SMALL HOLDING.—The council may themselves be the purchasers on a sale under this subsection, see s. 12 (1) of the Act of 1907, p. 75, *post*. The effect of the above subsection is to fetter the power of a small holder to dispose of his holding by will. He may leave the holding to any one he pleases, but if he wishes to ensure that his devisee shall continue to occupy the holding, he must guard against the possibility of subdivision of ownership. A devisee will be registered as owner in accordance with s. 41 of the Land Transfer Act, 1875, which enacts that

“On the death of the sole registered proprietor, or of the survivor of several joint registered proprietors of any freehold land, such person shall be registered as proprietor in the place of the deceased proprietor or proprietors as may, on the application of any person interested in the land, be appointed by the registrar, regard being had to the rights of the several persons interested in such land, and in particular to the selection of such persons as may for the time being appear to the registrar to be entitled according to law to be so appointed, subject to an appeal to the Court in the prescribed manner by any person aggrieved by any order of the registrar under this section.”

As to the registration of title to small holdings, see s. 10 and notes thereto (p. 43, *post*).

(4) Any sale by the county council under this section may be made either subject to the charge in respect of purchase money or free, wholly or partly, from that charge, and in either case the provisions of this Act with respect to the purchase money shall apply in like manner as if the sale were the first sale of a small holding under this Act (a).

(a) SALE OF HOLDING.—This subsection and the subsequent subsections (5) and (6) only relate to a sale by a council, either on forfeiture for breach of condition or in order to prevent subdivision. On such a sale, so much of the original purchase money as then remains unpaid may be continued as a charge on the holding as provided for by s. 6 (5), p. 36, *ante*, or the holding may be sold wholly or partially freed from such charge. The council cannot require the whole of the purchase money in respect of such sale to be provided in cash, for the effect of the subsection is to give the purchaser the same option as to payment as is given to an original purchaser by s. 6 (p. 33, *ante*), that is, to pay not less than one-fifth on completion, and to discharge the balance by perpetual rent charge, half yearly instalments, or terminable annuity. Should, however, the council themselves purchase the holding under the power conferred by s. 12 of the Act of 1907 (p. 75, *post*) the provisions of the above subsection will become inapplicable, and any charge on the land will be discharged by the purchase price so far as it goes, and any balance unpaid will be a debt from the small holder or his estate to the council.

(5) The proceeds of the sale shall be applied in discharge of any unpaid purchase money for the holding or redemption of any rent charge or terminable annuity which is not to continue a charge on the holding, and, subject as aforesaid, shall be paid to the person appearing to the council to be entitled to receive the same (a).

(a) See note to subs. (4) *ante*.

(6) The county council may, under special circumstances, to be recorded in their minutes, sell or consent to the sale under this section of a small holding free from all or any of the conditions imposed by this section, and may give such consent on such terms as they think fit (a).

(a) RELEASING CONDITIONS.—It is a matter solely within the discretion of the council whether they will on the sale of a forfeited holding or on a sale in order to prevent subdivision, free the holding

from any one or more of the conditions imposed by s. 9; a special resolution must be passed in each case, and the council cannot by general resolution decide to exempt all the holdings from the conditions or any of them. See also note to s. 3 (2), p. 25, *ante*.

(7) Every small holding let by a county council under the foregoing provisions of this Act shall be held subject to the conditions on which it would under this section be held if it were sold, except so far as those conditions relate to the purchase money; and if any such condition or any term of the letting is broken the council may, after giving the tenant an opportunity of remedying the breach (if it is capable of remedy) determine the tenancy (a).

(a) CONDITIONS ON LETTING.—The provisions of the Act as to letting have been considerably extended by the Act of 1907, which enables a council to adapt for letting, and to let any small holding (s. 7, p. 72, *post*), and to make rules prescribing the terms and conditions on a subject to which small holdings are to be let (s. 10, p. 74, *post*), and makes further provision as to compensation to tenants (s. 35, p. 96, *post*). Any rules made, however, can only be in extension and not in derogation of the conditions contained in subs. 1 of s. 9 (p. 39, *ante*), which are to apply to lettings as well as to sales, except so far as they relate to the purchase money. Any breach of conditions (b), (c), (d), (e), (f), and (g) will render the tenancy liable to determination.

(8) Nothing in or done under this section shall derogate from the effect of any building or sanitary byelaws for the time being in force (a).

(a) BYELAWS.—The byelaws of the local authority of the area in which a small holding is situate will apply thereto, and to any building thereon that comes within the scope of the byelaws, and to the occupier of such holding. In addition, the council providing the holding may impose conditions for securing healthiness and freedom from overcrowding in any dwelling-house erected on the holding (see subs. 1 (e), p. 39, *ante*).

10. *Registration of title to small holdings.*—(1) When a county council have purchased land under this Act (a) they shall apply for their registration as proprietors thereof with an absolute title under the Land Transfer Act, 1875 (b).

(a) PURCHASE OF LAND.—Land purchased under the extended powers conferred by the Act of 1907 must also be registered. As land

cannot be registered under the Land Transfer Act, 1875, unless it is of freehold tenure, or is leasehold land held under a lease which is either immediately or mediately derived out of land of freehold tenure, it follows that only freehold land or such leasehold land as aforesaid, can be purchased by a council for the purpose of providing small holdings, or if copyhold or customary freehold (where an admission or any act by the lord of the manor is necessary to perfect the title of the purchaser) land is agreed to be purchased, it must be immediately enfranchised and converted into freehold, and then registered. If, at any time, land other than freehold or leasehold, is found to have been registered with absolute or qualified title (see note (b) *infra*.) the registration shall not be annulled, but shall be deemed an error not capable of rectification under the Land Transfer Act, 1875, and any person suffering loss thereby shall be indemnified in the manner provided by the Land Transfer Act, 1897. For registration of title generally, see those Acts, the more material parts of which are printed in the Appendix, *post*; and the Land Transfer Rules, 1908, and reference may be made to Brickdale & Sheldon's Land Transfer Acts, 2nd ed., 1905. See also the INTRODUCTION, p. 11, *ante*.

(b) TITLE.—Registration with an absolute title involves an official examination of the title, which may sometimes be a long and expensive operation, and to obviate the necessity for this in the case of land acquired for small holdings it is provided by s. 19 (1) of the Land Transfer Act, 1897, that where a county council apply in pursuance of s. 10 of the Small Holdings Act, 1892, for registration as proprietors of land, they may be registered as proprietors of that land with any such title as is authorized by the Land Transfer Act, 1875. The titles authorized are absolute, possessory, and qualified. It would seem that the council must still apply for registration as proprietors with an absolute title, but that, if on examination it appears to the Registrar that a possessory or a qualified title only ought to be entered on the register, the title may be so entered. A council should, however, obtain an absolute title whenever possible. The effects of the respective registrations are described in the following sections of the Land Transfer Act, 1875 :—

ABSOLUTE TITLE.—“The first registration of any person as proprietor of freehold land with an absolute title shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows :—(1) To the incumbrances (if any) entered on the register; and (2) Unless, under the provisions of this Act, the contrary is expressed on the register, to such liabilities, rights, and interests (if any) as are by this Act declared not to be incumbrances; and (3) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, and equities

to which such persons may be entitled; but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors" (s. 7).

POSSESSORY TITLE.—"The registration of any person as first registered proprietor of freehold land with a possessory title only shall not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor; but, save as aforesaid, shall have the same effect as registration of a person with an absolute title" (s. 8).

QUALIFIED TITLE.—"Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date, or arising under a specified instrument otherwise particularly described in the register, and a title registered subject to such excepted estate, right, or interest, shall be called a qualified title, and the registration of a person as first registered proprietor of land with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted" (s. 9).

Where a county council, after having been registered, transfer any such land to a purchaser of a small holding, the purchaser must be registered as the proprietor of the land with an absolute title, no matter how the council is registered, subject only to such incumbrances as may be created under the Small Holdings Acts, 1892 and 1907, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances will be in damages only, and such damages shall be recoverable against the county council. (See Land Transfer Act, 1897, s. 19 (2).)

(2) Rules under the Land Transfer Act, 1875, may—

- (a) Adapt that Act to the registration of small holdings, with such modifications as appear to be required (a); and
- (b) On the application and at the expense of a county council provide, by the appointment of local agents or otherwise, for carrying into effect the objects of this section (b).

(a) RULES.—Rules were made on 9th August, 1892, under this

power, they are cited as The Land Registry (Small Holdings) Rules, 1892. For these Rules see p. 241, *post*. Enquiry at the Land Registry has elicited the opinion that the Act of 1907 does not give occasion for alteration or addition to these Rules.

(b) LOCAL AGENTS.—Rules 31 to 36 relate to the appointment of local registrars when a county council applies for such appointments to be made.

11. *Right of purchase, if land diverted from agriculture.*—If at any time after the restrictive conditions (a) imposed by this Act have ceased to attach to a small holding, the owner of the holding desires to use the holding for purposes other than agriculture (b), he shall before so doing, whether the holding is situate within a town or built upon or not, offer the holding for sale, first to the county council from whom the holding was purchased, next to the person or persons (if any) then entitled to the lands from which the holding was originally severed, [*and then to the person or persons whose lands immediately adjoin the holding,*] and sections one hundred and twenty-seven to one hundred and thirty of the Lands Clauses Consolidation Act, 1845, shall apply as if the owner of the small holding were the promoter of the undertaking, and the holding were superfluous lands within the meaning of those sections (c).

The words in italics and within brackets were repealed by s. 13 of the Act of 1907.

(a) The restrictive conditions are contained in s. 9 (as amended by ss. 11 and 12 of the Act of 1907), see p. 36, *ante*.

(b) For definition of “agriculture” see note to s. 9 (1) (c), p. 40, *ante*.

(c) LANDS CLAUSES CONSOLIDATION ACT.—Ss. 127 to 130 of the Lands Clauses Consolidation Act, 1845 (which apply to the sale of superfluous lands), are printed at p. 173, *post*. They, or rather ss. 128 to 130, must be read in conjunction with the above section as amended; the absurdity of applying s. 127 to the case of small holdings is apparent on a perusal of that section. The effect of the combination is that an owner, not a tenant, of land originally acquired from a council as a small holding, cannot divert the land from agricultural purposes unless he first gives the council, and the person from whom the council acquired the land, or his successor in title, an opportunity of purchasing the land. If both decline to purchase, the small holder may make any use he pleases of his land, but if either the

council or such person desire to exercise the right of pre-emption they must accept such offer within six weeks ; and if the price cannot be agreed it must be settled by arbitration. A tenant of a small holding will be precluded by the conditions of the tenancy from using the land except as a small holding.

12. *Extension of provisions of 45 & 46 Vict. c. 38.*—Where a person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, sells, exchanges, or leases, any settled land to a county council for the purposes of this Act, such sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained (a).

(a) See note to s. 13, *infra*. The best rent means the best rack rent that can be got for the land.

13. *Power to limited owner to sell at a fee farm rent.*—A person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, may grant the settled land, or a part thereof, to a county council for the purposes of this Act in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon (a).

(a) SETTLED LAND.—Settled land is land, and any estate or interest therein, which is in fact subject to the limitations of any deed, will, Act of Parliament or other instrument or instruments, in the nature of a trust or by way of succession. The person who is for the time being under a settlement beneficially entitled to possession, as distinguished from reversion, of settled land for his life, is the tenant for life of that land, and if two or more persons are so entitled, they together constitute the tenant for life. For the general powers of a tenant for life as to the sale, exchange, or leasing of the settled land, reference should be made to the Settled Land Act, 1882, and to s. 58 thereof for an enumeration of the persons who have the powers of a tenant for life. The procedure in purchasing settled land is so well known that it is hardly necessary to make any reference thereto. Perhaps the chief practical point is that the purchase money must be paid to either the trustees of the settlement or into Court, as the tenant for life may direct. Ss. 12 and 13 of the Small Holdings Act,

1892, must be read in conjunction with s. 28 of the Act of 1907 (see p. 90, *post*), which relates to the voluntary leasing of land for small holdings by limited owners, etc.

A grant at a fee farm rent, mentioned in s. 13, means a grant in consideration of a rent charge in fee. Technically, a fee farm rent is a perpetual rent renewed on a conveyance of lands in fee simple, and such cannot be reserved except by the Crown, owing to the statute *Quia Emptores* (18 Edw. I. c. 1).

14. Power to attach grazing rights, etc., to small holdings.—Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient (*a*).

(*a*) See note (*e*) to s. 1, p. 22, *ante*, and also s. 31 of the Act of 1907, p. 98, *post*, and the note thereto.

15. Letting of land unsold and sale of superfluous or unsuitable land.—(1) A county council shall, if practicable, sell or let as small holdings, and in accordance with this Act, any land acquired under this Act, but if the council are of opinion that any such land is not needed for, or is unsuitable for, small holdings, or cannot be sold or let under the foregoing provisions of this Act, or that some more suitable land is available, they may sell or let the land otherwise than under the said provisions, or exchange the land for other land more suitable for small holdings, and may pay or receive money for equality of exchange, and may erect such buildings or execute such other works as will in the opinion of the council enable the land to be sold or let without loss (*a*).

(*a*) **DISPOSAL OF SUPERFLUOUS LAND.**—This subsection relates to the disposal of land acquired by a council for the purpose of providing small holdings and for attaching rights in connection with small holdings, but which the council subsequently consider is not needed, or is unsuitable for that purpose. In such a case they may dispose of the land in any of the ordinary ways, namely, by sale or letting, or by exchange; but if they exchange it can only be for other land more suitable for small holdings, and the land received in exchange must be devoted to the purposes of small holdings. In order to effectuate a

sale or a letting a council may spend money on the land, but so that, in the opinion of the council, the original cost of the land, together with the money so spent, will ultimately be recouped to the council by the enhanced price they will be able to obtain as the price or rental of the land sold or let. The expenditure, however, must have regard to the provisions of s. 18, p. 52, *post*, restricting the powers of a council to incur expenditure in respect of small holdings.

The provisions of s. 15 will also apply in the case of land acquired under the extended powers given by the Act of 1907.

A council may sell or let to a borough, urban district, or parish council for the purpose of providing allotments, any land acquired by them for small holdings; the provisions of the Lands Clauses Acts with respect to the sale of superfluous land will not apply on any such sale (Act of 1907, s. 32 (1), p. 94, *post*).

(2) The council may also, while any sale of a holding is pending in pursuance of this Act, temporarily let or manage the holding for such time and in such manner as they think expedient (*a*).

(*a*) MANAGEMENT OF HOLDING.—This subsection is probably restricted to enabling a council to temporarily let or manage a holding during the period that intervenes between an agreement to sell a holding to a small holder and the completion of the sale. The term “while any sale of a holding is pending” would seem to point to an actual prospective sale, and not to a power to manage unsold holdings generally. If within a reasonable time land cannot be sold or let for the purposes of small holdings, the provisions of subsec. (1) must be carried out.

(3) Sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1854 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale in pursuance of this section before any such buildings or works as aforesaid are erected or executed on the land proposed to be sold, but save as aforesaid the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not apply (*a*).

(*a*) APPLICATION OF LANDS CLAUSES ACT, 1845.—The applicable sections of the Lands Clauses Consolidation Act, 1845, are printed in the Appendix, p. 140, *post*. They will only apply to lands sold as superfluous before any buildings and works have been executed under subs. (1), and they will not apply at all to land sold or let by a council

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to a borough, urban district, or parish council for the purposes of allotments, under the powers conferred by s. 32 (1) of the Act of 1907.

16. Provisions as to management of holdings.—(1) *Where a county council provide small holdings they may delegate, with or without restrictions, the powers of the county council under this Act with respect to the adaptation of land for any holdings, and the sale, letting, and management of any holdings to a committee consisting of—*

The county councillor representing the electoral division in which the holdings are situate ; and

Two other members of the county council ; and

Two of the allotment managers (if any) under the Allotments Act, 1887, for the parish or area in which the holdings are situate selected by those managers, or if there are no allotment managers, two persons appointed in manner provided by that Act for the appointment of allotment managers ; or

If the holdings are situate within the limits of a municipal borough, then, instead of the persons selected or appointed as aforesaid, two members of the borough council ; and in the construction of this Act references to the county council shall, in their application to the powers so delegated, include any such committee. Provided that a county council shall not under this section delegate any powers of making or levying a rate or of borrowing money.

(2) *The Local Government Act, 1888, shall apply to any committee appointed under this section as if it were appointed under that Act.*

S. 16 was repealed by the Act of 1907, which by s. 36 (see p. 99, post) makes it obligatory upon a council to establish a Small Holdings and Allotments Committee, and provides for the reference or delegation of powers and duties to such committee and to sub-committees thereof.

PART II.

LOANS BY COUNTY COUNCILS TO TENANTS
PURCHASING SMALL HOLDINGS.

17. *Power of county council to advance money for purchase of small holding.*—Where the tenant of a small holding has agreed with his landlord for the purchase of the holding the county council of the county in which the holding or any part of it is situate may, if they think fit, advance to the tenant on the security of the holding an amount not exceeding four-fifths of the purchase money thereof. (a)

(a) PURCHASE BY SITTING TENANTS.—S. 17 is rather outside the general scheme of the Small Holdings Acts, since it has no relation to the provision of small holdings by councils, but applies in this country the principle, long recognised in Ireland and Scotland, and since further recognised in the Small Dwellings Acquisition Act, 1899, that public money may be advanced to assist tenants in becoming owners of their holdings.

An advance can only be made when a person who is in fact a tenant and not merely a prospective tenant has actually agreed to purchase his holding from his landlord, and the amount advanced must not exceed four-fifths of the agreed purchase price, which must be a reasonable price. Further, the holding must be of such size and value as to come within the meaning of the expression small holding as defined by s. 46 (1) of the Act of 1907 (see also note to s. 1 of the Act of 1892, p. 20, *ante*).

(2) The provisions of this Act with respect to the purchase money secured by a charge on a small holding sold by a county council, and with respect to any small holding so sold, shall apply to an advance made and a holding purchased under this section, as if the advance was the purchase money, save that the county council shall not guarantee the title of the purchaser of the holding. (a)

(a) SECURING ADVANCE.—It is an essential condition of the advance that the provisions of the Acts relating to small holdings shall thereupon attach to the holding, including the restrictive conditions contained in s. 9, p. 39, *ante*.

The advance may be secured in the same way as the unpaid purchase money of a holding sold by the council under the Acts (see s. 6, p. 33, *ante*), *i.e.* not more than one-fourth may be secured by a perpetual rent charge, which may be redeemed, and the residue by a charge on the holding repayable by half-yearly instalments within a period not exceeding fifty years, or, if the small holder requires, by a terminable annuity. The title will not require to be registered, and therefore the charges must be effected by deed or deeds in the ordinary way.

For a precedent of an agreement to make an advance under s. 17 (see p. 130, *post*). Such an agreement must be under seal, and will require a ten shilling stamp.

For a precedent of a grant of a perpetual rent charge, see p. 250, *post*.

(3) No advance shall be made by a county council under this section, unless they are satisfied that the title to the holding is good, that the sale is made in good faith, and that the price is reasonable.

PART III.

SUPPLEMENTAL.

18. Restriction on powers of council.—(1) A county council shall not acquire land under this Act save at such price that, in the opinion of the council, all expenses incurred by the council in relation to the land will be recouped out of the purchase money for the land sold by the council, or in the case of land let out of the rent, and shall fix the purchase money or rent at such reasonable amount as will, in their opinion, guard them against loss (*a*).

(a) **EXPENSES.**—S. 17 of the Act of 1907 (p. 79, *post*) gives power to the Board of Agriculture and Fisheries to repay to a council the whole or any part of the expenses incurred by the council in proceedings in relation to the acquisition of land for the purposes of small holdings. Any amount so repaid must not be treated as part of the costs incurred by the council in relation to land.

In view of the greatly increased powers of letting land as small holdings conferred by the Act of 1907, it is important that the inclusion of letting and rents in s. 18 should be specially noticed. Whether a council purchases or takes on lease land to be let to tenants,

they are bound to protect the ratepayer against loss, and must take care that the rents, or annual payments in the nature of rent, to be obtained from the occupiers, shall be sufficient to recoup the council for all expenses incurred. The rents charged must be sufficient to cover sinking fund and interest in respect of any money borrowed by the council under s. 19, *infra*, or advanced from the county fund or other source from whence any capital is drawn.

(2) A county council shall not take any proceedings under this Act whereby the charge for the time being on the county rate, for the purposes of this Act, including the annual payments in respect of the loans raised for those purposes, is, in the opinion of the council, likely to exceed in any one year the amount produced by a rate of a penny in the pound, and, where the said charge at any time is equal or nearly equal to that amount, no further land shall be purchased in pursuance of this Act, until the charge has been decreased so as to admit of the further purchase without the charge exceeding the said amount. (a)

(a) CHARGE ON RATES.—The expression “charge” used in the above subsection means the net charge on the county rate calculated in accordance with regulations made by the Local Government Board after taking into account all receipts from or on account of small holdings and otherwise under the Small Holdings Acts, 1892 and 1907 (Act of 1907, s. 8, and see note to that section at p. 78, *post*, where the subject is further discussed).

The amount expended by a council in any one year in relation to small holdings, after giving credit for any receipts from and in respect of small holdings, should not exceed the amount produced by a rate of a penny in the £, and a council, in deciding upon the extent of their operations under the Acts, must keep in view this limitation on their spending power.

19. *Borrowing powers and expenses.*—(1) A county council may borrow money for the purposes of this Act in accordance with the Local Government Act, 1888, or, if the council of a county borough, with the Public Health Act, 1875, except that any money so borrowed shall, notwithstanding anything in either of those Acts, be repaid within such period not exceeding *fifty years* (a) as the council, with the consent of the Local Government Board, determine in each case. Provided that money borrowed under this Act

shall not be reckoned as part of the total debt of a county for the purpose of section sixty-nine, sub-section two, of the Local Government Act, 1888. (*b*)

(*a*) PERIOD FOR REPAYMENT.—The maximum period for repayment is raised to eighty years, where the purpose for which the money is borrowed is the purchase of land for small holdings (Act of 1907, s. 14 (1) p. 76, *post*). This extension will not apply to money borrowed for the purpose of making grants or advances to co-operative societies under s. 39 of the Act of 1907, or of paying compensation to tenants of small holdings for improvements, or, presumably, to money borrowed for the purposes of adapting land for small holdings or of erecting buildings or dwelling-houses thereon, since the inclusion of every expense of acquisition and adaptation under s. 4 (p. 30, *ante*) is only for the purpose of that section, which relates to the sale or letting, not the purchase, of small holdings by a council. Nor will it apply to money borrowed for the purpose of making advances to small holders under section 17 (p. 51, *ante*).

(*b*) BORROWING POWERS.—The borrowing powers of a county council are regulated by section 69 of the Local Government Act, 1888 (see Appendix, p. 214, *post*), the principal requirements of which, so far as applicable to small holdings, are (1) the consent of the Local Government Board must be obtained; (2) the money is to be borrowed on security of the county fund and of any revenues of the county or on either; (3) the maximum amount owing at any one time in respect of borrowed money, after deducting the amount of any sinking-fund, must not exceed one-tenth of the annual rateable value of the county according to the standard or basis for the county rate, except a Provisional Order be obtained, but as to this see s. 19 (1) *supra*; (4) the period for repayment is not to exceed thirty years (but see section 19 (1) and note (*a*) *supra*); (5) the mode of borrowing is by means of the issue of stock, or debentures or annuity certificates under the Local Loans Acts, or by mortgage under sections 236 and 237 of the Public Health Act, 1875 (see Appendix, p. 187, *post*) subject to certain conditions.

The council of a county borough may borrow for the purposes of small holdings in accordance with the provisions of sections 233 to 235 of the Public Health Act, 1875 (see Appendix, p. 185, *post*), which require (1) the sanction of the Local Government Board; (2) a local inquiry; (3) the maximum of outstanding debt must not exceed two years' assessable value of the borough; repayment within a period not exceeding sixty years (but see section 14 (1) of the Small Holdings Act, 1907, referred to above); the method of borrowing is by mortgage or issue of stock secured on the borough fund or rate. These powers have been considerably extended by numerous Acts which are to be construed with the Public Health Act, 1875.

(2) The Public Works Loan Commissioners may, in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed by a county council for the purposes of this Act. (*a*)

(*a*) PUBLIC WORKS LOAN COMMISSIONERS.—These Commissioners are a Government Department under the partial control of the Treasury, set up by Act of Parliament for the purpose of making advances of public moneys to local authorities and others in order to facilitate the carrying out of works of public utility. The offices of the Commissioners are in Old Jewry, London, E.C. For the constitution, powers, and duties of the Commissioners reference should be made to the Public Works Loans Act, 1875, and the amending Acts, and to various statutory regulations and Treasury Minutes issued thereunder. The amount of public money to be placed at the disposal of the Commissioners is fixed by periodical Acts of Parliament, and is arrived at on an estimate by the Treasury of the probable requirements of the Commissioners during the ensuing financial year, and for the purpose of supplying the necessary information every intending borrower must send to the Commissioners on or before December 31 a statement of any new loan or of any instalment of a loan already granted which he will probably apply to borrow from the Commissioners during the ensuing financial year.

The Commissioners can only make loans in accordance with their statutory authorisation, which is contained either in the Public Works Loans Act, 1875, ss. 9, 40 and Schedule I. and the amending Acts, or in some special Act of Parliament. The Small Holdings Acts, 1892 and 1907, come within the designation of a special Act. The Commissioners only advance money for new works or objects, they will not lend money for the repayment of money already borrowed from other sources. It will be observed that not only is the power of the Commissioners to lend at all purely discretionary, but that the amount of money at their disposal in any one year is strictly limited.

The fees to be paid to the Commissioners by borrowing authorities are fixed from time to time by regulations approved by the Treasury. Those now in force provide that the fees to be paid in respect of loans shall not exceed: for the first £1000, 20s. for every £100 of such loan; for the second £1000, 15s. per cent.; for the third and fourth £1000, 10s. per cent.; for the fifth to the tenth £1000, 5s. per cent.; and for each subsequent £1000 up to £100,000, 2s. 6d. for every £100. Loans exceeding £100,000 are to be charged as £100,000. Where a loan is advanced by instalments secured by one deed, there will be payable in respect of each advance after the first an additional fee of £1 if the amount of the advance does not exceed £100, and an additional fee of

£2 if the amount of the advance exceeds £100. In addition to these fees the applicants must pay any counsel's fees, the stamp duty, and any other disbursements incurred by the Commissioners in respect of the application.

In respect of all business not being a loan on rates, the fees payable are to be fixed by the Commissioners, regard being had to each particular case.

As a general rule, where the period for repayment is more than thirty years, the Commissioners require repayment to be made by equal half yearly payments of principal, with interest on the gradually decreasing balance.

(3) Every loan by the Public Works Loan Commissioners in pursuance of this Act shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer. (a)

(a) REPEAL.—This subsection was repealed by the Public Works Loans Act, 1897, s. 12 (4), Sched. II., which also provided, by section 1, that the rates of interest to be charged on loans should be such rates not less than 2½ per cent. per annum as should be fixed by the Treasury from time to time. By a Minute dated September 9, 1907, the Treasury directed that on loans advanced out of the Local Loans Fund after that date on the security of local rates, there should be chargeable the following rates of interest, namely, when the period of repayment does not exceed thirty years, the rate of 3½ per cent. per annum, and where the period of repayment does not exceed fifty years, the rate of 3¼ per cent. per annum. It is now provided by section 14 (2) of the Small Holdings Act, 1907, that where a loan is made by the Public Works Loans Commissioners to a county council (which includes the council of a county borough) for the purposes of the Act of 1892, as amended by the Act of 1907 :—

- (a) The loan shall be made at the minimum rate allowed for the time being for loans out of the local loans fund ; and
- (b) If the Local Government Board make a recommendation to that effect, the period for which the loan is made by the Public Works Loans Commissioners may exceed the period allowed under the Public Works Loans Act, 1875, and the Acts amending that Act, but the period shall not exceed the period recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years ; and
- (c) As between loans for different periods, the longer duration of

the loan shall not be taken as a reason for fixing a higher rate of interest.

See also note to this section, p. 77, *post*.

(4) Any capital money received by a county council in payment or discharge of purchase money for land sold by them, or in repayment of an advance made by them, shall be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose for which capital money may be applied. (a)

(a) CAPITAL MONEY.—The expression “capital money” is defined for the purposes of section 69 of the Local Government Act, 1888, as including any instalments, annual appropriations and sinking funds, and the proceeds of the sale of land and other property, but not money previously borrowed for the purpose of repaying a loan. The expression does not, it is submitted, include money received by way of interest or in repayment of expenses, and it will not, under the terms of the above subsection, cover any sums received from the Small Holdings Account, or elsewhere, in respect of loss incurred in carrying out the provisions of the Acts or of a scheme made under the Act of 1907. In a case where a county council, instead of borrowing money for the purchase of land for small holdings, charged the county rate with the amount required for that purpose, under s. 18 (2), *ante*, the Local Government Board sanctioned the application by the county council of capital money received in payment and discharge of purchase money for small holdings sold by them, in repayment to the council's Small Holdings Account of the amount advanced out of the county fund. For the accounts to be kept by a council under the Small Holdings Acts, see s. 37 of the Act of 1907 (p. 101, *post*).

(5) The expenses incurred by the council of a county borough under this Act shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate. (a)

(a) This provision will prevent the council of a county borough borrowing for the purposes of small holdings on the security of their sewage land and plant under section 235 of the Public Health Act, 1875 (see p. 186, *post*).

20. *Definitions*.—For the purposes of this Act—

The expressions “agriculture” and “cultivation” shall include horticulture and the use of land

for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables, and the like: (a)

The expression "county" shall mean the area under the authority of a county council:

The expression "county council" shall include the council of a county borough, [*and the expression "electoral division" in its application to a county borough divided into wards shall mean ward,*] and in its application to a county borough the expression "county rate" shall mean the borough rate or borough fund:

[*The expression "county elector" shall include "burgess."*]

In this Act, and in the enactments incorporated with this Act

The expression "land" shall include any right or easement in or over land. (b)

(a) AGRICULTURE.—See note (b) to section 1 (1), p. 21, *ante*.

(b) The words in italics and within brackets were repealed by the Small Holdings Act, 1907, s. 47 (4) and Schedule II.

21 to 24. *These sections relate to the application of the Act to Scotland.*

25. *Extent of Act.*—This Act shall not apply to Ireland.

26. *Commencement of Act.*—This Act shall come into operation on the first day of October, one thousand eight hundred and ninety-two.

27. *Short title.*—This Act may be cited as the Small Holdings Act, 1892. (a)

(a) Section 47 (1) of the Act of 1907 provides that that Act, in so far as it relates to small holdings, shall be construed with the Small Holdings Act, 1892, and may be cited with that Act as the Small Holdings Acts, 1892 and 1907.

THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1907.

(7 Edw. 7, Ch. 54).

SECT.

1. Appointment of Small Holdings Commissioners.
2. Inquiries and reports by Commissioners.
3. Preparation of draft schemes.
4. Procedure as to schemes.
5. Duty of councils to carry schemes into effect.
6. Acquisition of land for small holdings to be let to tenants.
7. Letting of land acquired for small holdings.
8. Explanation of s. 18 (2) of Act of 1892.
9. Power to let small holdings to associations.
10. Provisions as to rules by county council.
11. Number of dwelling-houses allowed on small holding.
12. Power of county council to resume possession of holding on death of owner.
13. Amendment of s. 11 of the Act of 1892.
14. Provisions as to borrowing.
15. Delegation of powers to councils of boroughs or urban districts.
16. Power of Board to provide small holdings.
17. Power of Board to repay part of expenses incurred by council.
18. Appointment of advisory and managing committees by Board.
19. Creation of special account.
[Ss. 20 to 25 do not relate to small holdings.]
26. Procedure for compulsory acquisition of land.
27. Power of council to renew tenancy of land compulsorily hired.
28. Provisions as to voluntary leasing of land for small holdings or allotments.
29. Provisions as to glebe lands.
30. Restrictions on the acquisition of land.
31. Grazing rights, etc., to be attached to small holdings or allotments.
32. Interchange of land for small holdings and allotments.
33. Power to resume possession of land hired compulsorily.
34. Compensation for loss of employment by labourers.
35. Compensation for improvements.

- 36. Small holdings and allotments committees.
- 37. Accounts of receipts and expenditure under the Small Holdings and Allotments Acts.
- 38. Extension of 46 & 47 Vict. c. 61, s. 41 to small holdings.
- 39. Co-operative societies, etc.
- 40. Provisions as to land acquired by Commissioners.
- 41. Provisions as to Commissioners.
- 42. Local inquiries.
- 43. Arbitrations and valuations.
- 44. Annual report to Parliament.
- 45. Saving for existing tenancies.
- 46. Interpretation.
- 47. Short title, commencement, extent and repeal.
Schedules.

An Act to amend the Law with respect to Small Holdings and Allotments. (a) [28th August, 1907.
Be it enacted, etc.

(a) The law relating to allotments is not within the scope of this book, which is confined to the law relating to Small Holdings as defined in s. 46 (1) of this Act, see p. 107, *post*, and also note (b) on p. 20, *ante*.

PART I.

SMALL HOLDINGS.

SCHEMES AS TO THE PROVISION OF SMALL HOLDINGS.

1. *Appointment of Small Holdings Commissioners.*—

(1) With a view to extending the provision of small holdings (a) the Board of Agriculture and Fisheries (herein-after referred to as "the Board") shall appoint two or more persons possessed of a knowledge of agriculture (b) to be Small Holdings Commissioners (herein-after referred to as the Commissioners,) and may appoint such other officers for the purposes of this Act as the Board may, with the consent of the Treasury, determine. (c)

(a) For the meaning of the expression "small holding," see s. 46 (1) p. 107, *post* and note (b) to s. 1 (1) of the Act of 1892 (p. 20, *ante*).

(b) Probably the word "agriculture" is here used in its popular sense, and the qualification is intended to secure that the Commissioners shall be persons having some knowledge of agriculture and husbandry generally; a bee-keeper, for instance, would hardly come within the spirit of the section, though in view of the definition in s. 20 of the Act of 1892 (see pp. 21 and 57, *ante*), he would be possessed of a knowledge of "agriculture."

(c) The Board appointed Mr. Talbot Baines and Mr. Cheney to be the Small Holdings Commissioners.

(2) There shall be paid out of money provided by Parliament to the Commissioners and officers so appointed such salaries or remuneration as the Treasury may from time to time determine; and all expenses incurred by those Commissioners and officers in the execution of their duties under this Act, to such amount as may be sanctioned by the Treasury, shall (except as otherwise expressly provided by this Act) be defrayed out of money provided by Parliament (*a*).

(a) OBJECT OF APPOINTMENT OF COMMISSIONERS.—The first line of subsection (1) of section 1 expresses the keynote of the Act of 1907 so far as small holdings are concerned. The Act of 1892 had not been much taken advantage of, owing partly to some difficulties which are remedied by the Act of 1907, but mainly owing to apathy on the part of the local authorities and the agricultural classes. Parliament was moved not only to grant greater facilities for the providing of small holdings, but also to do something to stimulate the demand for holdings. A new organization has, therefore, been constituted for the purpose of assisting the Board of Agriculture and Fisheries in arousing local interest in the matter of small holdings, and the Board have announced their intention of appointing officers to consult with the various county councils as to the administration of the Act (see Circular Letter of 30th September, 1907, p. 255, *post*).

The Commissioners are entirely under the control of the Board, they have no original jurisdiction, and practically no powers of initiation are conferred upon them. They are to be a medium for the collection and arrangement of information regarding the demand for small holdings, and they may state an opinion based on such information. In certain events they may be invested by the Board with administrative powers, see s. 5, p. 69, *post*.

2. *Inquiries and reports by Commissioners.*—(1) The Commissioners, acting under the directions of the Board, shall

ascertain the extent to which there is a demand for small holdings in the several counties or would be a demand if suitable land were available, and the extent to which it is reasonably practicable, having regard to the provisions of the Small Holdings Act, 1892, as amended by this Act, (a) to satisfy any such demand, and for that purpose shall confer with the county councils and may co-operate with such other authorities, associations, and persons as they think best qualified to assist them, and take such other steps as they think necessary. (b)

(a) SMALL HOLDINGS ACT, 1892.—The provisions of this Act, which the Commissioners must have regard to in coming to a conclusion as to the practicability of satisfying a demand for small holdings, are, primarily, the restrictive conditions contained in s. 18 (p. 52, *ante*), as explained by s. 8 of the Act of 1907 (p. 72, *post*), which limit the operations of a council under the Acts to an ordinary annual expenditure not exceeding the amount produced by a penny rate. But these restrictions must now be read in the light of s. 5 (4), p. 70, *post*, and s. 17, p. 79, *post*, of the present Act, which enable the Board to give financial assistance to a council in respect of expenses incurred in administering the Acts.

(b) See subsection (2) *infra*. It will be seen that the Commissioners must confer with the county council concerned before drawing up their report, but have a discretion as to what other authorities, associations, or persons they will consult.

(2) The council of any county borough, district, or parish (a) may make representations to the Commissioners in respect of any such matters as aforesaid, and it shall be the duty of every council to furnish the Commissioners with such information, and to give them such other assistance, as they may reasonably require for the purposes of this section. (b)

(a) REPRESENTATIONS BY PARISH.—In the case of a rural parish not having a parish council, representations under this subsection may be made by the parish meeting (s. 46 (4), p. 108, *post*).

(b) DUTY OF COUNCIL TO ASSIST.—There is no penalty provided for a refusal or neglect by a council to assist the Commissioners with information, etc., and *mandamus* hardly seems to be an appropriate remedy. But, presumably, the Commissioners' authority to ascertain, confer, and "take such other steps as they think necessary" includes

power to hold a public local inquiry, when they or one of them will be vested with the powers of an inspector of the Local Government Board holding an enquiry under the Public Health Acts (see note to s. 42, p. 105, *post*).

It will be competent for a council to incur and defray reasonable expenses of obtaining information and furnishing it to the Commissioners, and to place the services of their officers at the disposal of the Commissioners for such purpose. The information may be gathered in the way that seems best to the council, either by letter or circulars directed to other local authorities or by holding public meetings or inquiries in villages and elsewhere. A council may advertise in local newspapers, or may circulate bills and posters explaining the provisions of the Acts, and inviting communications thereon and applications for holdings.

(3) The Commissioners shall report the information acquired by them respecting any county to the Board, and shall state whether it is desirable, in the opinion of the Commissioners, that such a scheme as is hereinafter mentioned should be made, (a) and may indicate the nature of the proposals which the Commissioners consider ought to be embodied in the scheme. (b)

(a) SCHEME.—The scheme contemplated is one for the provision of small holdings for a particular county or county borough. See s. 3 *infra*.

(b) The Commissioners may act separately in making enquiries, reporting, etc., for anything required or authorised to be done by the Commissioners may be done by any one of them, see s. 41 p. 105, *post*. For the matters that should be specified in a scheme see s. 3 (4), p. 65, *post*.

(4) If in the course of their inquiries the Commissioners receive any information as to the existence of a demand for allotments they shall communicate the information to the councils of the county, and of the borough, urban district, or parish concerned.

3. *Preparation of draft schemes.*—(1) Where the Board, after considering the report and such representations as aforesaid as respects any county, are of opinion that it is desirable that a scheme (a) should be made, the Board shall forward the report of the Commissioners with such modifications or

observations (if any) as the Board think desirable to the county council, and it shall be the duty of the county council to prepare one or more draft schemes to give effect to the report with such modifications (if any) as aforesaid, or subject to such other modifications as the Board may make after considering any representations submitted to them by the county council, and in preparing the drafts the council shall have regard to the proposals (if any) of the Commissioners indicated in the report. (b)

(a) SCHEME.—The idea of providing for the formulation of a scheme in respect of each county is that in future small holdings shall be provided on some recognised system and not haphazard, but the powers conferred by the Act of 1892 are not suspended, and there seems to be no legal reason to prevent a council from continuing or commencing operations under that Act, quite independently and regardless of any scheme that may be made for their county or county borough. It is not likely, however, that a council will take an independent attitude in this respect, for certain material advantages may accrue by working on a scheme, see, for example, ss. 5 (4) and 17, *post*.

The Board must not only consider the report of the Commissioners, but must consider in connection therewith any representation made by any council or by a parish meeting under s. 2 (2) p. 62, *ante*. It follows, therefore, that the Commissioners must inform the Board of any such representations that may be made to them.

(b) The duty imposed on the council to prepare one or more draft schemes cannot be enforced. Under subs. (3), p. 65, *post*, a council may prepare a draft scheme or schemes on their own initiative, without waiting for any report of the Commissioners. See also the INTRODUCTION for observations on schemes generally.

(2) If the county council decline to undertake this duty, or within six months after receiving the report or within such extended time as may be allowed by the Board, fail to prepare such one or more draft schemes as appear to the Board desirable, the Board may direct the Commissioners to prepare one or more draft schemes. (a)

(a) If the Commissioners prepare a draft scheme under the direction of the Board, a copy must be sent by them to the county council concerned, see s. 4 (1), p. 66, *post*, in order that the council may have an opportunity of stating objections thereto.

(3) A county council, if they think fit may, without receiving any such report as aforesaid (a), prepare one or more draft schemes for the provision of small holdings for their county (b).

(a) That is, the report of the Commissioners to the Board made under s. 2 (3), p. 63, *ante*, which has to be forwarded by the Board to the Council concerned, s. 3 (1), *supra*.

(b) It is probable that in any county or county borough where there is any demand for small holdings, the council will avail themselves of this power, instead of waiting for the Commissioners to inquire and report as to the requirements of their county or borough. A draft scheme need not be in any special form, see INTRODUCTION.

As to the appointment by every county council of a small holdings and allotments committee and the delegation of powers to such committee, see s. 36, p. 99, *post*.

(4) A draft scheme under this section may specify—

- (a) the localities in which land is to be acquired for small holdings (a) ;
- (b) the approximate quantity of land to be acquired, and the number, nature, and size of the small holdings to be provided, in each locality (b) ;
- (c) whether, and to what extent, grazing or other similar rights, to be defined in the scheme, should be attached to the small holdings created in pursuance of the scheme, and, if so, the approximate quantity of land or extent and nature of the rights to be acquired for the purpose (c) ;
- (d) the time within which the scheme or any part thereof is to be carried into effect (d) ;

and the scheme may contain such incidental, consequential, or supplemental provisions (including provisions as to the subsequent variation of the scheme) as may appear necessary or proper for the purposes of the scheme.

(a) SITUATION OF LAND.—The land acquired need not be within the particular county or borough, and it would seem that the localities named in a draft scheme need only be conveniently situated for the use of the prospective small holders.

(b) SIZE.—No holding of fifty acres or less can be acquired compulsorily, and regard must be had to the restrictions imposed by

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s. 80, p. 92, *post*. The nature of a small holding is controlled by the definition in s. 46 (1), p. 107, *post*, which limits it to an agricultural holding of between one and fifty acres in extent, or which, if larger, has an annual value for the purposes of income-tax not exceeding £50. See also note (b) to s. 1 (1) of the Act of 1892, p. 20, *ante*.

(c) GRAZING RIGHTS.—See s. 31, p. 98, *post*, and also s. 14 of the Act of 1892, p. 48, *ante*, and note (e) to s. 1 (1) of that Act, p. 22, *ante*.

(d) TIME.—Under the Bill as originally drafted the Commissioners were to inquire into the actual or prospective demand for small holdings, but during the progress of the measure those words were eliminated, and the inquiry is restricted to the existing demand or to the demand that would be existing if suitable land were available. It would seem, therefore, that a scheme can only relate to an existing demand, and that the amount of land to be acquired and the time within which the scheme is to be carried into effect must be settled in view of that demand, or in other words that a scheme cannot be anticipatory or legislate for more than such a demand for holdings as is shown to exist or to be probable at the time the scheme is made.

(5) Where the Commissioners report or the county councils concerned are of opinion that a scheme should be made affecting two or more counties, the scheme may be prepared by the councils jointly, and may provide for joint action being taken by the councils (a).

(a) JOINT SCHEMES.—A joint scheme can only be prepared by two or more county councils, or by two or more county borough councils, or by one or more county councils and one or more county borough councils. The right of delegation of powers conferred upon councils by s. 15, p. 78, *post*, does not extend to enable a council to delegate the right to prepare a scheme to the council of a non-county borough or urban district.

This joint exercise of powers will be found useful in cases where the land to be acquired is on or near the boundary of counties, and where a county borough council has to go into an adjacent county to obtain land.

4. *Procedure as to schemes*.—(1) A copy of any draft scheme under this Act shall, if prepared by a county council be sent to the Board, and if prepared by the Commissioners be sent to the Board and to any county council

concerned (*a*), and the draft scheme and any modifications therein which the Board may propose to make shall be published and advertised together with notice of the time within and manner in which objections are to be sent to the Board in such manner as the Board think best adapted for informing the persons affected and for insuring publicity (*b*).

(*a*) DRAFT SCHEME.—The Commissioners can only prepare a draft scheme by the direction of the Board of Agriculture and Fisheries, and after a county council have declined to prepare a draft scheme, or have for at least six months after receiving the report of the Commissioners, failed to prepare a draft scheme that the Board considers desirable (see section 3 (2), p. 64, *ante*). The county council, although in default, must be given an opportunity of considering and objecting to any scheme for their county which may be made by the Commissioners.

(*b*) PUBLISHING SCHEME.—The Board must cause the draft scheme to be published and advertised in such manner as they think best adapted for informing the persons that will be affected thereby if it is carried into effect. There is no provision casting the duty to publish and advertise on the council concerned, nor is there anything to show how the cost of publication is to be defrayed. Section 19 (3), p. 81, *post*, which enables the Board to pay expenses out of the Small Holdings Account, is confined to “costs and expenses of the Board directed by this Act to be paid out of” such account, and the Act nowhere directs the expenses of publishing and advertising a draft scheme to be so paid. Probably, as was the case with schemes under the Education Act, 1902, publication will be procured by the council concerned at the direction of the Board, and the expenses incurred will be defrayed as general expenses of the council in administering the Acts. A suggested Form of Advertisement will be found in the Appendix, p. 116, *post*, but the form and manner of advertising will be subject to any regulations made by the Board.

(2) The Board shall consider the draft scheme and any objections thereto duly made (*a*) and may in any case and shall, if the county council object to the scheme, or, in the case of a scheme prepared by the council, to any modifications therein which the Board propose to make, hold a public local inquiry, at which the county council, and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard (*b*).

(a) **OBJECTIONS.**—Objections must be sent to the Board within such time and in such manner as the Board directs in the advertisement or notice of the draft scheme. Presumably, any council or person affected by the scheme will be entitled to lodge objections, and also any person who thinks the scheme unsatisfactory in any respect, though such last-named will not be entitled, as of right, to be heard at any consequent local inquiry.

(b) **LOCAL INQUIRY.**—If the council of the county or county borough affected by the draft scheme, lodge and persist in an objection thereto or to any modification, the Board must order a public local inquiry; in other cases the Board has a discretion to decide whether an inquiry shall be held or not. For the purposes of such an inquiry the Board, and their officers, and the Small Holdings Commissioners, or any one of such Commissioners, will have the same powers as the Local Government Board and their inspectors respectively have for the purpose of an inquiry under the Public Health Acts. Notices of the inquiry must be given and published in accordance with such general or special directions as the Board may give. See also section 42, p. 105, *post*.

(3) The Board, after considering the objections and the report of the person holding the inquiry (if any), may settle and confirm the scheme either without modification or subject to such modifications as the Board think fit, or may annul the scheme (a).

(a) **CONFIRMATION OF SCHEME.**—A scheme when confirmed will not, in itself, have any operative effect; it merely becomes an authorisation and direction to the council concerned or to the Commissioners, as the case may be (see section 5, *infra*), to take steps under the Small Holdings Acts, 1892 and 1907, to acquire the necessary land and provide the indicated small holdings. A council, as has already been pointed out, can act independently before any scheme is made, and there is nothing in the Act of 1907 to fetter that independent power by the making of a scheme. The advantage to a council of working under a scheme may be considerable in view of the provisions of the Act as to the reimbursement of loss incurred thereby (see section 5 (4), and note thereto, p. 70, *post*).

5. *Duty of councils to carry schemes into effect.*—(1) It shall be the duty of a county council on which obligations are imposed by a scheme to carry them into effect within such time as may be specified in the scheme, or within such further time as may be allowed by the Board, and for that

purpose the council may exercise any of the powers conferred on them by the Small Holdings Act, 1892, or by this Act (a).

(a) DUTY OF COUNCIL.—The duty of a council to carry into effect the obligations imposed by a scheme cannot be enforced against an unwilling or recalcitrant council, the only result of failure on their part will be that the Board may direct the Commissioners to carry the scheme into effect at the cost of the council (see subsection (2), *infra*).

(2) If the county council fail so to fulfil their obligations, the Board shall by order direct the Commissioners to take such steps as may be necessary for carrying the scheme into effect, and upon such order being made the Commissioners shall for the purpose have all the powers of a county council in relation to small holdings under the Small Holdings Act, 1892, and this Act, and those Acts shall apply as if references to the Commissioners were substituted for references to a county council (a):

Provided that such expenses of the Commissioners as the Board certify to have been incurred by the Commissioners in the exercise of such powers in relation to any scheme and to be properly payable by the county council shall on demand be repaid to the Board by the county council in default out of the county fund, or, in the case of a county borough, out of the borough fund or borough rate, and shall be recoverable as a debt due to the Crown, and such sums as the Board certify to have been received by the Commissioners in respect of any land acquired shall be paid to the council (b).

(a) DEFAULTING COUNCIL.—Subsection (2) establishes an innovation upon the hitherto accepted principles of local government, for it does much more than confer upon the Board a power of compelling a local authority to perform a clearly-defined statutory duty, but gives the Board power to impose a special policy upon a locality against the opinion of the elected local authority. Even if a county council have carefully considered the desirability and practicability of a scheme, and have decided that such a scheme is not desirable for their county, and even though they may propose to exercise their powers under the Acts independently of the scheme, the Board may

direct the Commissioners, who are entirely under the control of the Board, to carry out the policy of the scheme; and all expenses incurred in that behalf will ultimately fall upon the rates, subject to the powers of the Board to pay the whole or part of any loss incurred out of money placed at their disposal by Parliament.

Upon such an Order being made, the Commissioners will have all the powers of a council under the Acts, and will be subject to all the restrictions thereby imposed upon the operations of councils. Thus, the Commissioners cannot do anything under a scheme whereby the charge on the county rate will, in their opinion, be raised above the limit of a penny in the £ imposed by s. 18 (2) of the Act of 1892, as explained by s. 8 of the Act of 1907 (see p. 53, *ante*). The Board may appoint an advisory and managing committees to assist the Commissioners in carrying out a scheme (see s. 18 of the 1907 Act, p. 80, *post*).

(b) LAND ACQUIRED.—Any land acquired by the Commissioners will be vested in the Board, but may be transferred to the defaulting council upon certain eventualities (see s. 40, p. 104, *post*). Upon such transfer the sums received by the Commissioners in respect of the purchase-money and rent of small holdings, will be paid over to the council, subject, it is presumed, to the right of the Board to set off and retain the amount due from the council as a Crown debt (see *supra*).

(3) Any order made by the Board directing the Commissioners to carry a scheme into effect shall be laid before both Houses of Parliament as soon as may be after it is made (*a*).

(a) This provision has no effect upon, nor does it postpone, the operation of an Order made by the Board. Its object is only to give Parliament cognizance of any such Orders.

(4) If it appears to the Board that the carrying out of a scheme under this Act has resulted or is likely to result in a loss, the Board may, with the consent of the Treasury, pay or undertake to pay out of the Small Holdings Account the whole or any part of that loss (*a*).

(a) RECOUPMENT OF LOSS.—The Board have announced that in cases where the carrying out of a scheme has resulted or is likely to result in a loss, one-half of that loss will be borne by the Exchequer, subject to conditions set out in a Treasury Minute, for which see p. 261, *post*.

See also section 17, p. 79, *post*.

Amendments of the Small Holdings Act, 1892.

6. Acquisition of land for small holdings to be let to tenants.—(1) A county council may, for the purpose of providing small holdings for persons who desire to lease and will themselves cultivate the holdings, purchase land, whether situate within or without their county, by agreement, under and in accordance with the provisions of the Small Holdings Act, 1892, or take land on lease (*a*).

(*a*) **ACQUISITION OF LAND FOR LETTING.**—The Act of 1892 as amended by the present Act, relates, with one small exception, as to which see section 4 (3) of the Act of 1892, only to the acquisition and sale of land to purchasing small holders. The Act of 1907 provides equal, if not greater facilities for enabling a council to let land to tenants, and without enquiry whether the proposed tenant is in a position to purchase or not. The only essentials, so far as the prospective tenant is concerned, are that he is willing to take a holding on lease, that is not be a mere tenant at will, if so required by the council, and that he will himself cultivate the holding. The council may, under section 10 (1), p. 74, *post*, prescribe terms and conditions on or subject to which holdings may be let.

The above sub-section relates to the purchase of land by agreement, which will be effected under the provisions of section 8 of the Act of 1892, see p. 23, *ante*, or to the taking of land on lease by voluntary agreement with the owner, as to which reference should be made to section 12 of the Act of 1892, p. 47, *ante*, and to sections 28 and 29 of the Act of 1907, p. 90 and p. 91, *post*. If a council cannot acquire suitable land on reasonable terms, and in estimating the reasonableness of any terms regard should be had to the duty of a council not to risk a serious loss to the rates, and not to exceed the charge of a penny in the pound (see s. 18 of the Act of 1892, p. 52, *ante*), by voluntary agreement with the landowners, either by purchase or on lease, they may avail themselves of the following sub-section and acquire land compulsorily.

(2) If a county council are unable to acquire by agreement and on reasonable terms suitable land for the purpose aforesaid, they may acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land.

COMPULSORY ACQUISITION OF LAND FOR LETTING.—There is a wide distinction between the powers of a council as to acquiring land

for sale and acquiring it for letting to tenants. Land intended to be sold outright can only be acquired by agreement under the Act of 1892, for the power to acquire land compulsorily conferred by this sub-section is restricted to land required "for the purpose aforesaid," and that purpose is, under sub-section 1, "of providing small holdings for persons who desire to lease . . . the holdings," and does not extend to enable land to be acquired compulsorily "for the purpose of providing small holdings for persons who desire to buy . . . the holdings" within the meaning of section 1 (1) of the Act of 1892, but see note to section 7 *infra*.

The provisions of the Act of 1907 relating to the compulsory acquisition of land, which deal with both purchase and hiring, are contained particularly in sections 26, 27, 30, 31, 33, and Parts I. and II. of the First Schedule.

7. *Letting of land acquired for small holdings.*—Land acquired by a county council for the purposes of small holdings may be adapted for letting and let for small holdings under and in accordance with the provisions of the Small Holdings Act, 1892, as amended by this Act, and those provisions shall apply accordingly.

LETTING LAND.—Once land has been acquired for the purpose of small holdings, whether by agreement under the Act of 1892 or by compulsion under the Act of 1907, the council may adapt it for letting and let it to tenants. This power would seem to apply though the council originally acquired the land with the intention of selling it to small holders, but there is no converse power, and land acquired compulsorily in order that it may be let to tenants cannot subsequently be sold to purchasing small holders.

The powers of adaptation are contained in s. 3, sub-sections (2) and (3) of the Act of 1892, under which a council may divide up and fence the land, make occupation roads, and execute any other works, such as works for the provision of drainage or water-supply, which they consider can be more economically and efficiently executed for the land as a whole. They may also, as regards any particular holding, erect thereon such buildings, or make such adaptations of existing buildings as in their opinion are required for the due occupation of the holding, and cannot be made by the tenant. For these powers see the notes to section 3 of the Act of 1892.

8. *Explanation of s. 18 (2) of Act of 1892.*—It is hereby declared that for the purposes of subsection (2) of section eighteen of the Small Holdings Act, 1892, the expression "charge" means the net charge on the county rate calculated

in accordance with regulations made by the Local Government Board after taking into account all receipts from or on account of small holdings or otherwise under the Small Holdings Act, 1892, or this Act. (a)

(a) MEANING OF "CHARGE."—S. 18 (2) of the Act of 1892 (see p. 58, *ante*) prohibits a county council from taking any proceedings in connection with small holdings whereby the charge on the county rate will, in their opinion, be likely to exceed in any one year the amount produced by a penny rate. S. 8 of the Act of 1907 explains what is meant by "charge," and how the amount is to be arrived at. No regulations have yet been issued by the Local Government Board under this section; but, pending more exact information, it would seem that a council should, at the commencement of each financial year, prepare a kind of Small Holdings Budget, or an estimate of the probable expenditure during the year on, or in connection with, small holdings. They must ascertain the full produce of a rate of a penny in the £, on the county rate basis, and deduct therefrom the proper deduction (probably 5 per cent.) to cover the estimated loss in collection; the remainder will then represent the limit of their expenditure for the year on small holdings. They should estimate such expenditure, including all annual payments in respect of borrowed money, and from such total they will deduct all estimated receipts from small holders or tenants, such as instalments of purchase money and interest, and rent, any contributions from other authorities under s. 15, p. 78, *post*, and any sundry receipts. The balance will represent the charge on the rate, and may possibly be reduced, if it exceeds the amount produced by the penny rate, by taking into account any sums to be received from the Exchequer through the Board of Agriculture and Fisheries, in respect of loss or anticipated loss or under the provisions of s. 5 (4), or under s. 17 of the Act of 1907.

9. *Power to let small holdings to associations.*—In addition to the power under section four of the Small Holdings Act, 1892, of letting one or more small holdings to persons working on a co-operative system, a county council shall have power, with the consent of the Board, to let one or more holdings to any association formed for the purposes of creating or promoting the creation of small holdings, and so constituted that the division of profits amongst the members of the association is prohibited or restricted. (a)

(a) LETTING TO ASSOCIATIONS.—Under the earlier Act a county council had power to sell or let one or more small holdings to a

number of persons working on a co-operative system approved by the council; this power is now extended to enable a council, with the consent of the Board of Agriculture and Fisheries, to let one or more holdings to such an association as is mentioned in the section. There is no power to sell to such an association. It is not quite clear what is meant by the word "association"; presumably an association is intended to be something different to the "societies on a co-operative basis" mentioned in s. 39, p. 103, *post*; and it would seem to be beyond the powers of an association formed for the purposes of creating or promoting the creation of small holdings to itself occupy and cultivate a holding; yet the Acts are precise that holdings can only be let to persons who will themselves cultivate the holdings, and no provision is made for any relaxation of the conditions imposed by s. 9 of the Act of 1892 that the holdings must be cultivated by the occupier, and cannot be sub-divided, assigned, let, or sublet without the consent of the county council.

Probably, a council wishing to take advantage of this section and to let holdings to an association, may consent to the association sub-letting the holdings to eligible persons, or to the land being cultivated by members of the association. But there still remains a difficulty in making this provision square with the express requirements of the Acts. As the consent of the Board is required to a letting under this section, the council in applying for such consent must furnish particulars, say, a copy of the rules of the association, to enable the Board to decide whether the particular association comes within the scope of the section.

10. Provisions as to rules by county council.—(1) The power to make rules conferred on a county council by section seven of the Small Holdings Act, 1892, shall, subject to the provisions of that Act, extend to the making of rules prescribing the terms and conditions on or subject to which small holdings are to be sold or let by the county council.

(2) All rules made under the said section as so extended shall be subject to confirmation by the Board. (*a*)

(*a*) **RULES AS TO HOLDINGS.**—For the general power of a council to make rules regulating the sale and letting of holdings reference should be made to s. 7 of the Act of 1892 and the note thereto (p. 37, *ante*). A council must make such rules, and now all rules, not merely rules prescribing the terms and conditions on or subject to which small holdings are to be sold or let, must be confirmed by the Board. Under the earlier provision no confirmation was required. In 1893 the Board of Agriculture issued suggestions for rules, and presumably a new series of rules under the Acts may shortly be

expected, but none have as yet been issued. In the Appendix (p. 119, *post*) will be found some precedents or suggestions for rules to meet some of the more ordinary matters on which it will doubtless be thought desirable for a council to frame regulations.

11. *Number of dwelling-houses allowed on small holdings.*

—A county council may, if they think fit, relax the condition imposed by section nine of the Small Holdings Act, 1892, that not more than one dwelling-house shall be erected on a holding, if in their opinion such relaxation will be for the benefit of that or adjacent small holdings provided by the council, but so that the council shall not authorise more than one dwelling-house to be erected for occupation with any one small holding. (*a*)

(*a*) DWELLING-HOUSES.—Where holdings adjoin or are in close proximity to each other, it may be cheaper, or more convenient, in view, for instance, of such matters as access from the road or water supply, to erect more than one dwelling-house on a holding, semi-detached houses or a terrace of houses, for example, and power is therefore given to the council to relax the strict condition imposed by s. 9 of the Act of 1892 (see p. 39, *ante*), that only one dwelling-house shall be erected on a holding; but still there must only be one house for occupation in connection with each of the holdings. Any relaxation of the rule will be solely at the discretion of the council, who must not exercise such discretion unless they consider that the relaxation will be for the benefit of that or of adjacent holdings provided by them.

12. *Power of county council to resume possession of holding on death of owner.*—(1) Where under subsection (2) or under subsection (3) of section nine of the Small Holdings Act, 1892, the county council have power to cause or require a small holding to be sold, the council may, in the event of their requiring such holding for the purposes of the Small Holdings Act, 1892, or this Act, by notice in writing require the holding to be sold to themselves at such price as, in default of agreement, may be determined by arbitration, and thereupon the council shall, after such date as may be specified by the notice and on production to the registrar of the land registry of evidence of service of the notice and

of the payment of the sum so agreed or determined or of the tender of such payment, be registered as the proprietor of the land in place of the registered proprietor, and such registration shall operate as a registration on a transfer for valuable consideration under the Land Transfer Acts, 1875 and 1897.

(2) A notice for the purposes of this section shall be deemed to be sufficiently served if sent by registered post addressed to the owner or the personal representatives of the deceased owner at his registered address or at his last known place of abode.

(3) This section shall only apply in the case where a small holding has been sold by the county council. (*a*)

(*a*) SALE OF HOLDINGS.—This section can from its nature only apply in a case where a holding has been sold to a small holder under the provisions of the Act of 1892, and the third subsection is therefore superfluous. The cases referred to in which a council may require a holding to be sold are where the owner has broken one or more of the conditions of s. 9, and has failed to remedy the breach if it is capable of remedy, or the holder has on the death of the owner, and by reason of any devise, bequest, intestacy, or otherwise, become subdivided. Then without waiting for the twelve months to elapse and before any sale to some one person, the council may require the holding to be sold to themselves. In default of agreement the price will be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Acts, 1888 to 1906 (s. 43 (1), p. 105, *post*). A council can only exercise this power if they require the holding for the purposes of providing small holdings or of attaching grazing or other rights to small holdings or of providing allotments.

13. *Amendment of s. 11 of the Act of 1892.*—In section eleven of the Small Holdings Act, 1892 (which relates to the right of purchase if a small holding is diverted from agriculture), the words “and then to the person or persons whose lands immediately adjoin the holding” shall be repealed (*a*).

(*a*) For s. 11 of the Act of 1892, see p. 46, *ante*.

14. *Provisions as to borrowing.*—(1) The maximum period which may be sanctioned as the period for which money may be borrowed by a county council under the

Small Holdings Act, 1892, shall, where the purpose for which the money is borrowed is the purchase of land under that Act or this Act, be eighty years.

(2) Where a loan is made by the Public Works Loans Commissioners to a county council for the purposes of the Small Holdings Act, 1892, as amended by this Act—

- (a) The loan shall be made at the minimum rate allowed for the time being for loans out of the local loans fund ; and
- (b) If the Local Government Board make a recommendation to that effect, the period for which the loan is made by the Public Works Loans Commissioners may exceed the period allowed under the Public Works Loans Act, 1875, and the Acts amending that Act, but the period shall not exceed the period recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years ; and
- (c) As between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest. (a)

(a) **BORROWING POWERS.**—The borrowing powers of county and county borough councils were dealt with in the notes to s. 19 of the Act of 1892 (p. 53, *ante*), which should be referred to. The maximum periods for repayment that may be sanctioned are now: eighty years when the money is borrowed for the *purchase* of land, and fifty years when the money is borrowed for any other purpose. The Local Government Board, however, may in any case fix a shorter period when sanctioning the borrowing, and neither authority can borrow without such sanction, except that a county council may reborrow without any consent (see s. 69 (3) of the Local Government Act, 1888, p. 215, *post*).

If the money is borrowed from the Public Works Loans Commissioners, the interest charged must be at the minimum rate for the time being fixed by Treasury Minute, and no difference is in this respect to be made between loans for different periods. At the present moment the minimum rate for loans is $8\frac{1}{4}$ per cent. per annum, which was fixed by a Treasury Minute of September, 1907, for loans for a period not exceeding twenty years; councils borrowing for the

purposes of small holdings cannot be called upon to pay a higher rate although the period of the loan may be as long as eighty years.

It must be remembered, however, that the Public Works Loans Commissioners are not compelled to lend money, and that a council may therefore have to borrow elsewhere and pay a higher rate of interest.

15. *Delegation of powers to councils of boroughs or urban districts.*—A county council may make arrangements with the council of any borough or urban district in the county (a) for the exercise by the council of that borough or district as agents for the county council, on such terms and subject to such conditions as may be agreed on, of any powers of the county council in respect of the acquisition, adaptation, and management of small holdings for the borough or district, and the council of the borough or district may, as part of the arrangement, undertake to pay the whole or any part of the loss (if any) incurred in connection with those small holdings, and any sum payable in pursuance of any such undertaking shall be defrayed as part of the general expenses of the council in the execution of the Public Health Acts. (b)

(a) The expression council of any borough or urban district in the county does not include the council of a county borough, the latter are an independent authority under the Acts, and may themselves appoint borough or urban district councils to act as their agents.

(b) The borough or urban district council will have no original powers, anything they may be permitted to do will be done on behalf of the county council, who will be responsible, and will have to provide for costs or expenses out of the county rate, and to whom all receipts must be accounted for. The object of the section is to enable small holdings to be provided in or in the neighbourhood of towns and populous places for the use, primarily, of persons belonging to such places; and as an inducement to the county council to undertake the financial responsibility of providing such holdings, the local council may undertake to perform all the necessary work, except the financial part, and to reimburse the county any loss incurred in connection with their particular holdings. The county council remains responsible financially for the limit of the penny rate, for borrowing, and for the purposes of any relief from the Exchequer or the Small Holdings Account.

Powers of Board of Agriculture and Fisheries.

16. Power of Board to provide small holdings.—The Board may, if after inquiry they think it advisable to do so with a view to demonstrating the feasibility of the establishment of small holdings in any locality, exercise the powers conferred on county councils by the Small Holdings Act, 1892, and this Act in relation to small holdings (except the powers of acquiring land compulsorily and of borrowing) and those Acts shall apply as if references to the Board were substituted for references to a county council; but the expenses of the Board shall be defrayed out of, and their receipts paid into, the small holdings account, and no part thereof shall be paid out of any rate. (a)

(a) In pursuance of the main object of the Act of 1907, which is to stimulate the demand for and the provision of small holdings, the Board is enabled to embark on experiments at the national cost. The State, as represented by the Board, may provide holdings wherever land can be purchased or hired by agreement, and may in respect of such land exercise all the powers of adaptation, selling, and letting that may be exercised by councils in respect of land acquired by them. The Board on acquiring land by purchase will have to be registered as the owner in the same way as a council. All payments made by the Board will have to come out of the Small Holdings Account. See s. 18, p. 80, *post*, for the appointment by the Board of advisory and management committees.

17. Power of Board to repay part of expenses incurred by council.—The Board may, if they think fit, and subject to regulations made by the Board with the approval of the Treasury, (a) repay or undertake to repay to a county council, out of the Small Holdings Account, the whole or any part of the expenses incurred by the council in proceedings in relation to the acquisition of land for the purposes of small holdings, (b) and the amount so repaid shall not be treated as part of the costs incurred by the council in relation to land for the purposes of sections four and eighteen of the Small Holdings Act, 1892, (c) but nothing in this section shall

authorise the repayment of any part of any purchase money, compensation, or rent payable in respect of the land. (b)

(a) REGULATIONS.—No regulations under this section have yet been issued.

(b) EXPENSES INCURRED.—It must be noted that the apparent generosity of the early part of this section is considerably lessened by the concluding words; no part of the purchase money, or compensation, or rent, payable in respect of land acquired can be repaid, and any repayment at all is at the absolute discretion of the Board, which, it is reasonable to suppose, will be largely controlled by the largeness or smallness of the balance remaining to the credit of the Small Holdings Account after all prior charges have been defrayed. It would seem that the only expenses that can be repaid, wholly or partly, will be the legal expenses of the council as a purchaser or lessee of the land, including any surveyor's or agent's remuneration in connection with the negotiations, and the expenses of procuring an order for compulsory purchase or hiring, and of any arbitration or valuation consequent thereon, and any compensation paid to displaced labourers under s. 34, p. 96, *post*. It is doubtful whether any expenses incurred in respect of land not acquired, as when a council withdraws a notice to treat under the provisions of s. 26 (8), p. 87, *post*, can be repaid; and it would seem that the costs of registering a small holder's title under the Land Transfer Acts cannot be regarded as incurred in proceedings in relation to the acquisition of land. The object of the section is to enable the Board to relieve the councils of the unremunerative part of the cost of providing small holdings.

(c) The total cost of the acquisition of the land, which has to be apportioned among the different small holdings into which the land is divided, is to be reduced by any amount repaid by the Board under this section, and any such amount will also go in reduction of the amount to be charged on the rates. For s. 4 of the Act of 1892 see p. 30, *ante*, and for s. 18 of that Act see p. 52, *ante*.

18. *Appointment of advisory and managing committees by Board.*—Where the Commissioners acting in default of a county council, (a) or the Board for the purpose of demonstrating the feasibility of the establishment of small holdings, (b) exercise the powers of a county council under the Small Holdings Act, 1892, or this Act, the Board may appoint such advisory and managing committees as they think fit, with such powers and duties as may be conferred or imposed on them, and may, with the consent of the Treasury, pay out of the Small Holdings Account all reason-

able travelling and out-of-pocket expenses of the members of committees so appointed :

Provided that where the expenses are incurred for the purposes of the powers exercised by the Commissioners acting in default of a county council, those expenses shall be treated as expenses incurred by the Commissioners in the exercise of the powers of the county council (c).

(a) See section 5 (2), p. 69, *ante*.

(b) See section 16, p. 79, *ante*.

(c) Section 18 is a necessary corollary to sections 5 (2) and 16, for it is obvious that neither the Small Holdings Commissioners nor the Board could directly manage the small holdings they are authorised to provide. In the case of committees appointed by the Board, the out-of-pocket expenses of the members will be defrayed out of the Small Holdings Account, and those of members of a committee appointed to advise or assist the Commissioners will be, if certified by the Board under section 5 (2), a debt payable by the county council, on whose default the Commissioners are directed by the Board to take action. There is no power to pay the members of the committees for their services.

19. *Creation of special account.*—(1) For the purposes of this Act there shall be opened an account at the Bank of England, called “The Small Holdings Account.”

(2) There shall be paid to this account—

(a) Such money as may from time to time be provided by Parliament towards defraying the costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account; (a) and

(b) All sums received by the Board and directed by this Act to be paid into the Small Holdings Account. (b)

(3) The costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account shall be paid by the Board out of the money standing to that account.

(4) At the end of every financial year, accounts of the receipts and expenditure of the Small Holdings Account shall be made up in such form and with such particulars as may be directed by the Treasury, and shall be audited by

the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereon.

(5) Payments out of, and into, the Small Holdings Account, and all other matters relating to the Account, and to the money standing to the credit of the Account, shall be paid and regulated in such manner as the Treasury direct.

(a) The sum of £100,000 is to be placed to the credit of the Account during the first year.

(b) The only sums received by the Board and directed by the Act to be paid into the Small Holdings Account are the receipts of the Board in respect of experimental small holdings established under section 16, p. 79, *ante*, and any receipts in respect of advances to co-operative societies made by the Board under section 39 (3), p. 103, *post*.

20 to 25. [These sections constitute Part II. of the Act, and relate to allotments.]

PART III.

GENERAL.

ACQUISITION OF LAND.

26. *Procedure for compulsory acquisition of land.*--

(1) Where a council propose to purchase land compulsorily under this Act, (a) the council may, subject to the provisions of Part I. of the First Schedule to this Act, (b) submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement. (c)

(a) **COMPULSORY PURCHASE.**—The only power a council has to purchase land compulsorily is for the purpose of providing small holdings for persons who desire to lease and will themselves cultivate the holdings (see note to s. 6, p. 71, *ante*), and then only when the

council are unable to acquire suitable land by agreement and on reasonable terms.

(b) **COMPULSORY ORDER.**—For these provisions see p. 109 *et seq.*, *post.* They prescribe the procedure to be adopted in preparing and obtaining an Order.

(c) **LANDS CLAUSES ACTS.**—The provisions referred to are principally comprised in sections 16 to 68 of the Lands Clauses Act, 1845, for which see Appendix of Statutes, *post.* The other provisions of the Lands Clauses Acts are incorporated with the Small Holdings Acts by virtue of s. 3 (1) of the Act of 1892, see note to that subsection, p. 24, *ante*, and Appendix of Statutes, *post.*

(2) Where a council propose to hire land compulsorily, (a) the council may submit to the Board an order for the compulsory hiring of the land specified in the order for a period not less than fourteen nor more than thirty-five years, and the provisions of Part I. of the First Schedule to this Act (b) shall apply to the order in like manner as it applies to an order for compulsory purchase, with the substitution of “hiring” for “purchase,” and with the modifications set out in Part II. of that Schedule. (b)

(a) **COMPULSORY HIRING.**—A council may hire land compulsorily under section 6 (2), p. 71, *ante*, for the purpose of providing holdings to let to tenants, for a period of not less than fourteen years nor more than thirty-five years with a power to renew the tenancy for another term similarly limited (see s. 27, p. 88, *post.*).

(b) See p. 109 *et seq.*, *post.*

(c) See p. 112 *et seq.*, *post.*

(3) An order under this section shall be of no force unless and until it is confirmed by the Board, and the Board may, subject to the provisions of the First Schedule to this Act, (a) confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act. (b)

(a) See p. 109 *et seq.*, *post.*

(b) **CONFIRMATION OF ORDER.**—Before an Order is confirmed by the

Board it must be published by the promoting council and notice thereof must be given locally, and to the persons interested in the land proposed to be acquired, and any person interested must be given an opportunity of lodging an objection to the order. If any objection is persisted in, the Board must cause a public inquiry to be held in the locality in which the land is situate, at which the promoting council and all persons interested in the land are entitled to be heard. Other persons may be heard at the discretion of the person holding the inquiry. When the order is confirmed by the Board it is final and will have the effect of an Act of Parliament.

(4) An order under this section (a) may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired, (b) and every such order shall, if so required by the owner of the land to be acquired, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by such owner and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used or enjoyed by them over the land to be acquired: Provided that, notwithstanding anything contained in this subsection, no new easement created by or in pursuance of such order over land hired by a council shall continue beyond the determination of such hiring. (c)

(a) That is, an order whether for compulsory purchase or for compulsory hiring.

(b) No new easement created by the order over land compulsorily hired will continue beyond the hiring period (see *infra*).

(c) EASEMENTS.—A council may acquire, either by agreement or compulsorily, any right or easement over land which they consider necessary or advantageous for the benefit of their small holdings. Thus, they may acquire rights of way, or of taking water, or of drainage, etc., over, from, through, or into adjoining lands not acquired by them. In addition, they are specially authorised to acquire stints and other alienable common rights of grazing for the purpose of attaching to holdings provided by them rights of grazing over lands acquired by them (see section 31, p. 93, *post*); when a council acquire land compulsorily, either by purchase or by hiring, they must, in accordance with the above subsection, when required by the owner of the land, create such new easements as may be necessary to preserve to the owner the due enjoyment of other lands belonging to him. In this connection reference should be made to the restrictions on compulsory acquisition of land imposed by section 30, p. 92, *post*.

(5) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase or hiring being compulsory. (a)

(a) This subsection follows the principle observed in the cases of compulsory purchase under the Housing of the Working Classes Act, 1890, and for allotments under section 9 of the Local Government Act, 1894. It is usual in estimating the amount of compensation to add 10 per cent. to the amount of the valuation, but such an addition is expressly forbidden in the case of land compulsorily acquired for the purposes of the Small Holdings Acts.

(6) Where land authorised to be compulsorily hired by an order under this section is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession shall have the like effect as if it were a lease authorised by section eighteen of the Conveyancing and Law of Property Act, 1881. (a)

(a) LEASE OF MORTGAGED LAND.—The Conveyancing Act, 1881, s. 18, provides as follows :—

“ 18. Leasing powers of mortgagor and of mortgagee in possession.

—(1) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3) The leases which this section authorizes are—

(i) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii) A building lease for any term not exceeding ninety-nine years.

(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7) Every such lease shall contain a covenant by the lessee for

payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

(10) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage

made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting."

The restrictions contained in subsection (3) of section 18 will not apply to a lease for the purposes of small holdings, which may be made for a period not less than fourteen nor more than thirty-five years, with an option of renewal, as to which see section 27, p. 88, *post*.

(7) This subsection does not relate to small holdings.

(8) If, after the determination of the amount of the compensation (including in the case of land hired compulsorily the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land and in such case any person on whom such a notice of withdrawal has been served shall be entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration :

Provided that in every case in which the notice of withdrawal is given by the commissioners acting in default of the council all compensation payable under this subsection shall be paid out of the Small Holdings Account. (a)

(a) **WITHDRAWAL OF NOTICE TO TREAT.**—This subsection creates an exception to the general rule that where a notice to treat has been served under the Lands Clauses Acts it cannot be withdrawn. A council is now authorised to withdraw a notice on certain conditions, which must be strictly observed. They must be satisfied, on reason-

able evidence or estimates, that they cannot let the land for small holdings without incurring a loss, in view of the capital sum they will have to pay as the purchase price (or in the case of land hired as the rent) and compensation for the land, and the notice of withdrawal must be in writing and be served within six weeks of the date of the arbitrator's award. It must be served on every person on whom a notice to treat in respect of the land in question was served. As the service of a notice to treat constitutes a sort of incomplete contract with the landowner, which prevents him creating new interests in the land, and entails upon him expenses in connection with the assessment of compensation, etc., he will be entitled to obtain from the council compensation for any loss or expenses he has incurred by reason or in consequence of the notice to treat and of its withdrawal. In default of agreement the amount of compensation will be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Acts, 1883 to 1906 (section 43, p. 105, *post*). As to the obligation of a council not to acquire land at such a price as will probably result in a loss, see section 18 of the Act of 1892, p. 52, *ante*. It must be observed, too, that there is no power given to withdraw a notice on the ground that the land cannot be sold to small holders without loss, for land cannot be acquired compulsorily when intended to be sold.

27.—(1) *Power of council to renew tenancy of land compulsorily hired.*—Where a council has hired land compulsorily, for small holdings or allotments, the council may, by giving to the landlord not more than two years nor less than one year before the expiration of the tenancy notice in writing, renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer appointed by the Board, but otherwise on the same terms and conditions as the original lease, and so from time to time :

Provided that if on any such notice being given the landlord shall prove to the satisfaction of the Board that any land included in the tenancy is required for the amenity or convenience of any dwelling-house, then such land shall be excluded from the renewed tenancy. (a)

(a) **RENEWAL OF TENANCY.**—A council cannot hire land compulsorily for more than thirty-five or less than fourteen years, but this subsection gives them power to continue and renew a tenancy on

giving the required notice to the landlord; the expression "landlord" here means the person entitled to receive the rent of the land from the council (s. 46 (2), p. 107, *post*). A limited owner making a voluntary lease may confer a like power of renewal, see s. 28, p. 90, *post*.

A continued tenancy may be in turn renewed in like manner. The council must offer to renew the tenancy of all the land held under the particular hiring, but the landlord has an option to refuse a renewal in respect of any part of the land which he satisfies the Board is required for the amenity or convenience of any dwelling-house. If a part of the land is thus reserved by the landlord, or for any reason it is necessary to alter the rent when a tenancy is renewed, the amount may be fixed by agreement, or by valuation as mentioned in the subsection. In other respects the terms and conditions of the hiring must remain as under the original lease. The valuer will be appointed and his remuneration be fixed by the Board; presumably, the council will have to pay him, but there is no express provision to that effect.

(2) In assessing the rent to be paid under this section the valuer shall not take into account any increase in the value of the holding—

(a) due to improvements in respect of which the council would have been entitled to compensation, if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy, (a) or

(b) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under this Act, (b) or

(c) due to the establishment by the council of other small holdings or allotments in the neighbourhood,

or any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had so quitted the land as aforesaid. (c)

(a) For the right of a council to receive compensation, see s. 35 (2), p. 97, *post*.

(b) As to resumption of possession by landlord, see s. 33, p. 95, *post*.

(c) The matters in respect of which the landlord may be entitled to compensation at the determination of a tenancy are: in respect of

any depreciation of the land by reason of breach of covenants in the lease to cultivate the land in a proper manner, or by reason of the way in which the land has been used, or in respect of the non-repair of buildings (see Sched. I, Part II. (2), p. 112, *post*).

28. Provisions as to voluntary leasing of land for small holdings or allotments.—(1) Any person having power to lease land for agricultural purposes for a limited term, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any), lease land to a council for the purposes of small holdings or allotments for a term not exceeding thirty-five years, either with or without such right of renewal as is conferred by this Act in the case of land hired compulsorily for those purposes. (*a*)

(*a*) **LEASE BY LIMITED OWNERS.**—The statutory power of a limited owner, under the Settled Estates Act, the Settled Land Acts, the Conveyancing Act, 1881, and the Acts relating to ecclesiastical bodies and persons, to grant agricultural leases is generally restricted to leases for not more than twenty-one years. By the above subsection any person whose right to grant leases is limited, whether by statute or settlement, may lease lands to a council for the purposes of small holdings for any term not less than fourteen years and not exceeding thirty-five years, but if the statute or settlement by which he is controlled imposes any consents or conditions upon his power of leasing, he can only make a voluntary lease to a council subject to the like consents and conditions, except in so far as they may relate to the length of term to be granted. He may also agree to the council having a similar right of renewal to that referred to in s. 27, *ante*.

Land belonging to a limited owner may also be hired compulsorily.

(2) The like powers of leasing may be exercised, in the case of land belonging to the Crown, by the Commissioners of Woods, with the consent of the Treasury, in the case of land forming part of the possessions of the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster by deed under the seal of the Duchy in the name of His Majesty his heirs and successors, and, in the case of land forming part of the possessions of the Duchy of Cornwall, by the Duke of Cornwall or other the persons for the time being having power to dispose of land belonging to that Duchy.

(3) The like powers of leasing may be exercised in the case of glebe land or other land belonging to an ecclesiastical benefice by the incumbent thereof with the consent of the Ecclesiastical Commissioners alone upon such terms and conditions and in such manner as the Ecclesiastical Commissioners may approve. (a)

(a) Sect. 28 (3) and s. 29 were inserted in the Act at the request of the Ecclesiastical Commissioners in order to facilitate the letting of glebe land for small holdings.

29. Provisions as to glebe lands.—In the case of glebe land or other land belonging to an ecclesiastical benefice hired by a council for the purposes of small holdings or allotments—

- (1) The provisions of the Ecclesiastical Dilapidations Act, 1871, shall not during the continuance of the tenancy be applicable to the buildings upon the land;
- (2) At the determination of the tenancy, on the council quitting the land, or at any time within twelve months thereafter, the incumbent of the benefice to which the land belongs may apply to the Ecclesiastical Commissioners for their consent to the removal of any buildings which have been erected on the land for the purpose of adapting the land for small holdings or allotments, (a) and, on proof to the satisfaction of the Commissioners that any such buildings are useless, and that it is to the interest of the benefice that they should be removed, the incumbent may, with the consent of the Commissioners and subject to such directions as they may give, pull down any such buildings and dispose of the materials thereof, and any proceeds shall be paid to the Commissioners to be by them applied to the improvement of the benefice in such manner as the Commissioners may direct.

(a) **REMOVAL OF BUILDINGS.**—This provision will not affect the right of the council or a small holder to remove buildings before or

within a reasonable time after the termination of the tenancy, under the power conferred by s. 84 of the Agricultural Holdings (England) Act, 1883, p. 210, *post*, as amended by s. 4 of the Agricultural Holdings Act, 1900, p. 232, *post*, or under s. 4 (2) of the Small Holdings Act, 1892, p. 81, *ante*.

For the compulsory purchase of glebe land see Sched. I., Part I. (8), p. 111, *post*.

30. *Restrictions on the acquisition of land.*—(1) No land shall be authorised by an order under this Act to be acquired compulsorily (a) which at the date of the order forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house or is otherwise required for the amenity or convenience of any dwelling-house, or which is woodland not wholly surrounded by or adjacent to land acquired by a council under this Act, or which at that date is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archæological interest.

(a) These restrictions apply whether the land is purchased or hired compulsorily.

(2) The council in making, and the Board in confirming, an order for the compulsory acquisition of land shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose, where part only of a holding is taken, shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land. (b)

(b) For payment of compensation to displaced labourers, see section 84, p. 96, *post*.

(3) No holding of fifty acres or less in extent, nor any part of any such holding, shall be authorised by an order under this Act to be acquired compulsorily for the purposes of small holdings or allotments.

31. *Grazing rights, etc., to be attached to small holdings or allotments.*—(1) The powers of a council to acquire land for small holdings or allotments shall, subject to the restrictions by this Act imposed, (a) include power to acquire land for the purpose of attaching to small holdings or allotments provided by the council rights of grazing and other similar rights over the land so acquired, and to acquire for that purpose stints and other alienable common rights of grazing. (b)

(a) See section 30, p. 92, *ante*, for these restrictions.

(b) See also section 14 of the Act of 1892, p. 48, *ante*, as regards the attachment of grazing rights to small holdings. In the discussion in Parliament on this section it was stated by the President of the Board of Agriculture and Fisheries that the words "or other similar rights" were inserted to make the meaning of "rights of grazing" more elastic than they would otherwise be, and that they were intended to cover such rights as the cutting of bracken or fern for fodder. It is more probable, however, that when the words come to be judicially interpreted they will be construed on the *ejusdem generis* principle, and be held to refer to such easements as, *e.g.*, "pannage," or the right to turn pigs on to land at certain seasons of the year.

(2) Any rights created or acquired by the council under this section shall be attached to the small holdings or allotments in such manner and subject to such regulations as the council think expedient.

(3) The powers conferred by this section shall be in addition to and not in substitution for the powers of providing common pasture conferred by section twelve of the Allotments Act, 1887. (c)

(c) **COMMON PASTURE.**—Under s. 12 of the Allotments Act, 1887, as amended by the Small Holdings Act, 1907, any borough, or urban district, or parish council, are empowered, where it appears to them

that, as regards their district, land can be acquired for affording common pasture at such price or rent that all expenses incurred may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, to submit to the county council a scheme for providing such common pasture, and the county council, if satisfied of the expediency of such scheme, may by order authorise the scheme to be carried into effect. If after such a sanctioning order has been made, the council are unable to obtain suitable pasture by agreement, they may make further application to the county council for an order authorising them to take land compulsorily for the purpose of providing common pasture.

32. Interchange of land for small holdings and allotments.—(1) A county council may sell or let to a borough, urban district, or parish council for the purpose of allotments any land acquired by them for small holdings, and a borough, urban district, or parish council may sell or let to the county council for the purpose of small holdings any land acquired by them for allotments (a) and the provisions of the Lands Clauses Acts with respect to the sale of superfluous land shall not apply on any such sale. (b)

(a) **INTERCHANGE OF LANDS.**—This subsection creates an exception to the general rule that land acquired by a local authority must be devoted solely to the purpose for which it was acquired, and section 15 of the Act of 1892, p. 48, *ante*, must be read in the light of the later enactment. Any hired land dealt with under section 32 will remain subject to the right of the landlord to resume possession thereof under the provisions of section 33, *post*.

(b) The provisions of the Lands Clauses Acts referred to, namely ss. 127 to 135, will have no application on such a sale; they would not, in any event, apply on a letting, and some of the sections are quite inapplicable to councils disposing of surplus lands, but the practical effect of the above subsection is that the rights of pre-emption given on a sale of surplus lands will not apply in the case of land sold by one council to another for the specified purposes.

(2) Subsection (2) of section eleven of the Allotments Act, 1887, shall apply to the proceeds of sale under this section of land acquired for allotments. (c)

(c) **SALE OF ALLOTMENT LAND.**—The effect of subsection (2) is that where a council acquires for the purposes of small holdings from the

council of a borough, urban district or parish, land originally acquired by the latter for the purposes of allotments, the purchase money or rent paid by the now acquiring council must be applied in a certain way, but presumably the purchasing or hiring council will be under no responsibility to see to such application. Section 11 of the Allotments Act, 1887, relates to the sale, letting or exchange of land acquired for allotments, but which is no longer needed and is unsuitable for that purpose. Subsection (2), as amended by the Act of 1907, provides as follows :—"The proceeds of a sale under this section and any money received by the sanitary authority on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the sanitary authority in respect of the land acquired under the Act, or in acquiring, adapting, and improving other land for allotments under this Act, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable."

33. *Power to resume possession of land hired compulsorily.*

—(1) Where land has been hired by a council compulsorily under this Act or the Allotments Acts, and the land or any part thereof at any time during the tenancy thereof by the council is shown to the satisfaction of the Board to be required by the landlord to be used for building, mining, or other industrial purposes, or for roads necessary therefor, it shall be lawful for the landlord to resume possession of the land or part thereof upon giving to the council twelve months' previous notice in writing of his intention so to do; and, if a part only of the land is resumed, the rent payable by the council shall as from the date of resumption be reduced by such sum as in default of agreement may be determined by valuation by a valuer appointed by the Board.

(2) Where the land has been hired compulsorily by the Commissioners acting in default of a county council, any question as to the right of the landlord to resume possession of the land or any part thereof under this section shall be determined by an arbitrator appointed by the Lord Chief Justice of England. (a)

(a) **LANDLORD'S RIGHT TO RESUME POSSESSION.**—The right of a landlord to resume possession is subject to the consent of the Board, and the provision in subsection (2) is inserted to meet the case of the Board being both judge and party, since land acquired by the Commissioners is vested in the Board (s. 40, p. 104, *post*). Hired land acquired or parted with under s. 32, *ante*, will remain liable to this right of the landlord to resume possession. When possession is resumed, the tenancy will be regarded as determined so far as the land resumed is concerned, and the rights to compensation given by section 35, p. 97, *post*, will arise.

34. Compensation for loss of employment by labourers.—Where a labourer who has been regularly employed on any land acquired by a county council for small holdings, proves to the satisfaction of the county council that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the county council may pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land. (a)

(a) **COMPENSATION TO LABOURERS.**—There is no obligation upon a council to pay compensation to labourers, but if they think fit they may pay such sum as they deem proper, entirely as a gratuity, to a labourer who comes within the terms of the section. Some difficulty may arise as to what is the meaning of the term “regularly employed,” for it is only to a labourer who has been regularly employed on the acquired land, and who proves that he has been damnified by reason of its acquisition for small holdings, that a council is authorised to make a payment in the nature of compensation. Any sum properly paid by a council under this section is to be treated as part of the expenses incurred in acquiring the land, and must be apportioned as required by s. 4 of the Act of 1892 (p. 30, *ante*), and may be repaid to the council by the Board under s. 17, p. 79, *ante*.

35. Compensation for improvements.—(1) Where a council has let a small holding or allotment to any tenant, the tenant shall as against the council have the same rights with respect to compensation for the improvements mentioned in paragraph (27) (i) (ii) (iii) and (iv) of the First Schedule to the Agricultural Holdings Act, 1900, as if it had been agreed in writing

that the holding or allotment should be let as a market garden : (a)

Provided that the tenant shall not be entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council affecting either the whole or any part of the holding or allotment ; but, if the tenant feels aggrieved by any such prohibition, he may appeal to the Board, who may confirm, vary, or annul the prohibition, and the decision of the Board shall be final.

(a) TENANTS' RIGHT TO COMPENSATION FOR IMPROVEMENTS.—On the termination of his tenancy a tenant will be entitled to compensation from the county council for any of the following improvements, unless the council have in writing expressly prohibited him from executing them :—

- (i) Planting of standard or other fruit trees, permanently set out.
- (ii) Planting of fruit bushes permanently set out.
- (iii) Planting of strawberry plants.
- (iv) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

The tenant may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim for compensation, and remove any tool-house, shed, greenhouse, fowl-house, or pig sty built or acquired by him, for which he has no claim for compensation (s. 4 (2) of Act of 1892). It is submitted that the words "other trees" must be construed *ejusdem generis* with fruit trees.

(2) Where land has been hired by a council for small holdings or allotments the council shall (subject in the case of land hired by agreement to any agreement to the contrary) be entitled at the determination of the tenancy on quitting the land to compensation under the Agricultural Holdings (England) Acts, 1883 to 1906, for any improvement mentioned in paragraph (27) (i) (ii) (iii) and (iv) of the First Schedule to the Agricultural Holdings Act, 1900, and for any improvement mentioned in Part I. or Part II. of that schedule which was necessary or proper to adapt the land for small holdings or allotments, as if such improvements as aforesaid were improvements mentioned in Part III. of that schedule : (b)

Provided that, in the case of land hired compulsorily, the

amount of the compensation payable to the council for those improvements shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to those improvements. (c)

(3) and (4) These subsections do not relate to small holdings.

(b) COUNCIL'S RIGHT TO COMPENSATION FOR IMPROVEMENTS.—When a council quits land hired for small holdings compensation may be claimed in respect of the matters (i) to (iv) set out in note (a) *supra*, and also in respect of any of the following improvements which were necessary or proper for the purpose of adapting the land for small holdings:—

- (v) the erection, alteration, or enlargement of buildings;
- (vi) the formation of silos;
- (vii) the laying down of permanent pasture;
- (viii) making and planting osier beds;
- (ix) making water meadows or works of irrigation;
- (x) making gardens;
- (xi) making or improving roads and bridges;
- (xii) making or improving watercourses, ponds, wells, or reservoirs, or works for the application of water power or for the supply of water for agricultural or domestic purposes;
- (xiii) making or removal of permanent fences;
- (xiv) planting crops, orchards, or fruit bushes;
- (xv) protecting young fruit trees;
- (xvi) reclaiming waste land;
- (xvii) warping or weiring of land;
- (xviii) embankments and sluices against floods;
- (xix) erection of wire work in hop-gardens;
- (xx) drainage.

(c) Generally, as a small holding is an agricultural holding within the meaning of the Agricultural Holdings Acts, 1883 to 1906, a tenant of a holding, and the council as tenants of land acquired by hiring, will have the statutory right to compensation for improvements, and also any right to which a tenant may be entitled by the custom of the country; the grounds of claim mentioned in s. 35 are not exclusive of the others, but only give enlarged rights. The provisions of the Agricultural Holdings Acts with regard to the improvements for which compensation may be claimed and the procedure for the recovery thereof are given in the Appendix.

As regards the matters mentioned in notes (a) and (b), *supra*, compensation therefore may be awarded, although they were executed

without the consent of or notice to the landlord. Other subject matters for compensation are mentioned in Part III. of the above named First Schedule to the Act of 1900. If the parties fail to agree on the amount and time and mode of payment of the compensation, the question will be settled by a single arbitrator in accordance with the rules set out in Part I. of the Second Schedule to the Act of 1900, unless the parties agree in writing that some other mode of arbitration shall be adopted, when the rules in Part II. of the Schedule will apply. For these rules, see p. 234, *post*.

If the parties fail to appoint an arbitrator or arbitrators the Board of Agriculture and Fisheries will make the appointment. It should be noticed that when the Agricultural Holdings Act, 1906, comes into operation on January 1, 1909, all matters of compensation must be decided by a single arbitrator. That Act, too, extends the matters for which compensation may be obtained, see s. 6 thereof. For a series of forms connected with such arbitrations, to which the provisions of the Arbitration Act, 1889 will not in general apply (s. 2 (8) of the Act of 1900), reference may be made to the Encyclopædia of Forms and Precedents, Vol. VII., pp. 720 *et seq*.

Supplemental.

36. *Small holdings and allotments committees.*—(1) Every county council shall establish a small holdings and allotments committee, consisting either wholly or partly of members of the council, but the members of the council shall be a majority, (a) and all matters relating to the exercise and performance by the council of their powers and duties under the Small Holdings Act, 1892, the Allotments Acts, and this Act (except the power of raising a rate or borrowing money) shall stand referred to the small holdings and allotments committee, and references in the Allotments Acts. to the standing committee shall be construed as references to the small holdings and allotments committee, and the council before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the small holdings and allotments committee with respect to the matter in question, and the council may also delegate to the small holdings and allotments committee, with or without restrictions or conditions, as they think fit, any of

their powers under the said Acts except the power of raising a rate or borrowing money. (b)

(a) **SMALL HOLDINGS AND ALLOTMENTS COMMITTEE.**—No limit is placed on the number of members of this committee, nor is there any provision as to a quorum thereof, nor as to the conduct of proceedings. Any management committees appointed under the now repealed s. 16 of the Act of 1892, will cease to exist, as will also any inquiry committee appointed under the now repealed s. 5 of that Act, and any standing committee for the purpose of allotments appointed under s. 3 of the Allotments Act, 1890. The council may delegate all or any of their powers under the Acts to the committee, subject only to the reservation of the powers of raising a rate or borrowing money, and even in respect of non-delegated powers, the council must not exercise any such power, except in matters of urgency, until the committee have reported on the matter. This sub-section is practically a reproduction of s. 17 (1) (2) of the Education Act, 1902, leaving out the references to a scheme for the constitution of the committee, and to the power to establish more than one committee. For the purpose of small holdings each council can have only one committee, but under the next subsection the committee can appoint any number of sub-committees, either for different purposes or for different localities, and may delegate to any sub-committee any powers vested in the committee by the council; thus, for example, the council may delegate to the committee any of their powers relating to compensation, and the committee may in turn establish a compensation sub-committee to deal with all matters arising under that heading.

(b) **DELEGATION OF POWERS.**—Any resolution delegating powers to the committee may be rescinded by the council, and the delegated powers may be resumed by the council (see *Huth v. Clarke* (1890) 25 Q.B.D. 391; *Eaton v. Basker* (1885) 6 Q.B.D., 201; *Cook v. Ward* (1877) 2 C.P.D., 255), and, although a council delegate all possible powers to the committee, the council still remain responsible as the small holdings authority, both for their own actions and for those of the committee, and may at any time act as such. It will be desirable for all matters of routine, and all details as to inquiries, correspondence, applications for and grants or lettings of small holdings, to be delegated to the committee, so as to avoid the delay that would be caused if such matters have to be referred to the quarterly meeting of the council.

(2) The small holdings and allotments committee may delegate any of their powers to sub-committees, consisting either wholly or partly of members of the committee, and in appointing any sub-committee to which is committed the

powers of management of small holdings shall have regard to (a) the advisability of including amongst the members of the sub-committee members of the councils of the boroughs, urban districts, or parishes in which the holdings are situate, or for which they are provided, and other persons acquainted with the needs and circumstances of the area for which the sub-committee acts.

(a) The committee is given a discretion as to the appointment of non-members on to a sub-committee, but if in the honest exercise of that discretion they decide not to make any such appointment, their decision cannot be questioned.

If a council take any considerable advantage of their powers as to small holdings, it may be necessary for the council, in addition to delegating powers to the committee, to appoint some person to look after the small holdings, to collect rents, to see that the conditions attached to the land are carried out by the respective small holders, to keep the proper accounts, and to act generally as a manager of the small holdings, subject to the directions of the Small Holdings and Allotments Committee and of any sub-committees. Such a person could also act as clerk to the committee and sub-committees.

(3) Where any receipts or payments of money under this Act are entrusted by the county council to the small holdings and allotments committee, or any sub-committee thereof, (a) the accounts of those receipts and payments shall be accounts of the county council, and made up and audited accordingly. (b)

(a) PAYMENTS.—Having regard to the requirements of s. 80 of the Local Government Act, 1888, that all payments out of the county fund shall be made by the county treasurer in pursuance of an order of the county council signed and countersigned as thereby prescribed, it would seem that a county council cannot delegate to the committee the power of making orders for the payment of money. The council may, however, place funds at the disposal of the committee, and the accounts of the committee or any sub-committee as to the expenditure of such funds will, under the above sub-section, be considered to be accounts of the county council.

(b) As to accounts, see section 37 *infra*.

37. *Accounts of receipts and expenditure under the Small Holdings and Allotments Acts.*—Separate accounts shall be kept of the receipts and expenditure of a council under the

Small Holdings Act, 1892, 'as amended by this Act, and under the Allotments Acts as amended by this Act, and any such receipts shall, subject to the provisions of those Acts, be applicable to the purposes of those Acts respectively, but not for any other purpose except with the consent of the Local Government Board (a); [*the remainder of the section does not relate to small holdings.*]

(a) ACCOUNTS.—A council must not mix up moneys paid or received in respect of small holdings with payments or receipts in respect of allotments—the matters must be kept distinct. One reason for this requirement is the limitation on a council's expenditure in connection with small holdings which is imposed by section 18 of the Act of 1892, p. 52, *ante*; another is found in the power given to the Board to repay to a council either the whole or a part of certain losses and expenses incurred in connection with small holdings, under ss. 5 (4) and 17 of the Act of 1907, see p. 70 and p. 79, *ante*. Moneys received in respect of small holdings can only be applied for the purposes of small holdings, except the Local Government Board expressly sanctions some other method of using the money.

As to the form of the accounts, much must necessarily depend upon the extent and manner in which a council undertake the obligations of the Acts. In a county where a penny rate produces a considerable sum, it is probable that the council will not need to borrow, at any rate, not at first. In such a case all purchase moneys and rents paid in respect of land acquired, and all costs and expenses, will be paid out of the current rate. A separate ledger account should be opened, to which all payments should be debited, and all transactions should be paid into and drawn out of this account. The actual receipts may be passed to the County Fund, but must be earmarked to the special ledger account. In addition to the list that a council is bound to keep under section 8 of the Act of 1892, a Register of Small Holdings should be kept, showing expenditure and receipts in connection with each holding, and the instalments, etc., of purchase money and interest (see s. 6 of the Act of 1892, p. 33, *ante*). For the form of such a register and the entries therein, see Appendix of Forms and Precedents, p. 138, *post*.

As the accounts of a county council, using the term in its ordinary meaning, including the accounts of the committee and any sub-committees, will fall within the general law as to accounts and audit, it will be within the power of the Local Government Board, under section 71 (1) of the Local Government Act, 1888, and section 5 of the District Auditors Act, 1879, to make regulations respecting the form of keeping accounts relating to small holdings, the date to which they

are to be made up, and as to examination and certifying, though it is doubtful whether such power will be exercised.

For the law as to audit of accounts reference may be made to the *Encyclopædia of Local Government Law*, Vol. I., p. 77 *et seq.*

38. *Extension of 46 & 47 Vict. c. 61, s. 41, to small holdings.*—Section forty-one of the Agricultural Holdings (England) Act, 1883, which relates to the resumption of the possession of land by landlords with a view to its use for certain purposes, shall have effect as if there were included amongst those purposes the provision of small holdings (a).

(a) For section 41 see Appendix of Statutes, p. 211, *post*. The above provision is in pursuance of the policy of the Act to give greater freedom to landowners to sell or let their land for small holdings. The effect is that on a tenancy from year to year a landlord may give his tenant notice to quit a part only of the holding if he requires to use such part for the purpose of selling or letting it to a council who are providing small holdings.

39. *Co-operative societies, &c.*—(1) A county council may promote the formation or extension of, and may, subject to the provisions of this section, assist societies on a co-operative basis, having for their object, or one of their objects, the provision or the profitable working of small holdings or allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking or insurance or otherwise, and may employ as their agents for the purpose any such society as is mentioned in subsection (4) of this section.

(2) The county council, with the consent of, and subject to regulations made by, the Local Government Board, may for the purpose of assisting a society make grants or advances to the society, or guarantee advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the council think fit, and the making of such grants or advances shall be a purpose for which a council may borrow under the Small Holdings Act, 1892.

(3) Where the Board themselves provide small holdings under the provisions of this Act, they may, with respect to

any such society carrying on business or intending to carry on business in the neighbourhood of those small holdings, exercise the powers of a county council under this section, and the provisions of this section shall apply accordingly, except that references to the Treasury shall be substituted for references to the Local Government Board, and that the expenses and receipts of the Board under this section shall be paid out of and into the Small Holdings Account.

(4) The Board with the consent of the Treasury may out of the Small Holdings Account make grants, upon such terms as the Board may determine, to any society having as its object or one of its objects the promotion of co-operation in connection with the cultivation of small holdings or allotments. (a)

(a) Generally speaking, it may be said that the object of this section is to enable the councils and the Board to assist in enlarging the class of persons likely to become small holders. Merely to give a man an opportunity of acquiring land on fairly easy terms is not sufficient; a small holder must have a little capital, for the land requires stocking, and seeds, manures, implements, tools, and, perhaps, to some small extent, labour, have to be provided. Hitherto the powers of the councils have been confined to providing and adapting the land, and, in certain cases, erecting, or advancing money for the erection of, dwelling-houses and necessary buildings. Section 39 enables them to go further, and to assist both existing and future societies formed for the purpose of, in various ways, enabling a man to take the best advantage of the opportunity now afforded him of getting on to the land, and of disposing of the produce of his labour thereon.

For the powers of a council or the Board as to selling and letting small holdings to co-operative persons and associations, see section 4 (3) of the Act of 1892, p. 32, *ante*, and section 9 of the Act of 1907, p. 73, *ante*.

40. Provisions as to land acquired by Commissioners.—Any land acquired by the Commissioners under this Act shall be vested in the Board, (a) but the Board may at any time transfer the land to the council at whose expense the land was acquired, and shall so transfer the land on payment of all sums due from the council in connection therewith, (b)

and on proof to the satisfaction of the Board that the council are willing to exercise and perform their powers and duties in relation thereto.

(a) The only power of the Commissioners to acquire land for small holdings is under section 5 (2) of the Act, p. 69, *ante*, when they are ordered by the Board to take the place of a defaulting council.

(b) When the Commissioners act in default of a council all expenses properly incurred must be repaid by the council to the Board; and any sums received by the Commissioners in respect of any land acquired must be paid over to the council (s. 5 (2), p. 69, *ante*).

41. Provisions as to Commissioners.—Anything by this Act required or authorised to be done by or to the Commissioners may be done by or to any one such Commissioner, and any document purporting to be signed by a Commissioner shall be received in evidence without proof of the appointment or handwriting of the Commissioner.

42. Local inquiries.—(1) The Board and the Small Holdings Commissioners and other officers of the Board shall have for the purpose of an inquiry in pursuance of this Act the same powers as the Local Government Board and their inspectors respectively have for the purpose of an inquiry under the Public Health Acts.

For these powers see sections 293–296 of the Public Health Act, 1875, p. 187, *post*. Reference may also be made to *Lumley's Public Health*, 6th edition, vol. I., pp. 424–426, and *Glen's Public Health*, 13th edition, vol. I., pp. 890–892.

(2) Notices of the inquiries shall be given and published in accordance with such general or special directions as the Board may give.

43. Arbitrations and valuations.—(1) All questions which under this Act are referred to arbitration (a) shall, unless otherwise expressly provided by this Act, be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Acts, 1883 to 1906. (b)

(a) **ARBITRATIONS AND VALUATIONS.**—The questions referred to arbitration under the Act are :—

- (a) The determination of the price to be paid by a council on the resumption of a holding on the death of the owner, see s. 12 (1), p. 75, *ante*.
- (b) The determination of compensation on the compulsory acquisition of land, and
- (c) On the withdrawal of a notice to treat, see s. 26 (8), p. 87, *ante*.
- (d) Compensation for improvements, see s. 35, p. 96, *ante*.
- (e) Compensation for depreciation under Schedule I., Part II. (7), p. 114, *post*.
- (f) Compensation under s. 41 of the Agricultural Holdings (England) Act, 1883, see s. 38, p. 103, *ante*.
- (g) As to the right of a landlord to resume possession of land compulsorily hired by the Commissioners, see s. 33 (2), p. 95, *ante*.

In contradistinction to arbitration, certain matters are to be settled by valuation, to be made by a valuer appointed by the Board or the Lord Chief Justice of England, namely :—

- (a) The rent to be paid on a renewed tenancy under s. 27, p. 88, *ante*.
 - (b) The reduction in rent in consequence of a landlord resuming possession under s. 33, p. 95, *ante*.
 - (c) The amount of rent in the case of land compulsorily hired, see Schedule I., Part II. (3), p. 113, *post*.
- (b) For these Acts, so far as they relate to Compensation and Arbitration, see Appendix of Statutes, p. 208, *post* .

(2) Where an order has been made and confirmed authorising the compulsory acquisition of land by the Commissioners acting in default of a county council the arbitrator or valuer, as the case may be, shall be appointed by the Lord Chief Justice of England instead of by the Board.

(3) The remuneration of an arbitrator or valuer appointed under this Act shall be fixed by the Board.

44. Annual report to Parliament.—The Board shall make an annual report to Parliament of their proceedings, and of the proceedings of the Commissioners, under this Act, and

also of the proceedings of the several county, borough, district, and parish councils under the Small Holdings Act, 1892, the Allotments Acts, and this Act, and for that purpose every such council shall, before such date in every year as the Board may fix, send to the Board a report of their proceedings under the Small Holdings Act, 1892, the Allotments Acts, and this Act during the preceding year. (a)

(a) The councils of boroughs (except county boroughs), districts, and parishes, have no powers or duties as to small holdings, except such as they may be authorised to exercise as agents for a county or county borough council under s. 15, p. 78, *ante*. The form of the Report to be sent by a council to the Board is left to the discretion of the council, and only one report can be required in any year.

45. *Saving for existing tenancies.*—Nothing in this Act shall affect the rights and obligations under any tenancy created before the commencement of this Act (a) under the Small Holdings Act, 1892, or the Allotments Acts. (b)

(a) The Act came into operation 1st Jan., 1908.

(b) See s. 46 (2) *infra*.

46. *Interpretation.*—(1) For the purposes of the Small Holdings Act, 1892, and this Act the expression “small holding” means an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding fifty pounds. (a)

(a) See note (b) to s. 1 (1) of the Act of 1892, p. 20, *ante*.

(2) For the purposes of this Act—

The expression “prescribed” means prescribed by regulations made by the Board: (a)

The expression “Allotments Acts” means the Allotments Acts, 1887 and 1890, as amended by the Local Government Act, 1894:

The expression “landlord,” in relation to any land compulsorily hired by a council, means the

person for the time being entitled to receive the rent of the land from the council.

(a) This definition of "prescribed" must be substituted for the definition of that expression in s. 2 of the Lands Clauses Act, 1845.

(3) For the purposes of the Small Holdings Act, 1892, the Allotments Acts, and this Act, any expenses incurred by a council in the enfranchisement of any land acquired by them for small holdings or allotments, (a) or in the purchase or redemption of land tax, or any quit rent, chief rent, tithe, or other rentcharge, (b) or other perpetual annual sum issuing out of land so acquired, shall be deemed to have been incurred in the purchase of the land. (c)

(a) ENFRANCHISEMENT.—For the obligation of a council to enfranchise land of copyhold or customary freehold tenure acquired by them for the purposes of small holdings, see note (a) to s. 10 of the 1892 Act, p. 48, *ante*.

(b) TITHE.—If any part of the land purchased for the purpose of small holdings is subject to tithe rent-charge, the council should redeem it, as there may be difficulties and considerable expense in re-apportioning the charge when the land is subdivided into separate holdings. The Board of Agriculture and Fisheries have advised that the Tithe Acts do not permit of an altered apportionment being made so as to charge with a separate rent-charge any area which was previously entirely free from liability for tithe rent-charge. Should any of the proposed small holdings be composed partly of tithe free and partly of titheable land, the entire holding could, perhaps, be charged with rent-charge by an altered apportionment under s. 12 of the Tithe Act, 1860.

(c) Payments made in respect of any of the matters referred to in this subsection, will be subject to the provisions of ss. 4 (p. 30, *ante*), 6 (p. 33, *ante*), and 18 (p. 52, *ante*) of the Act of 1892; and repayment thereof cannot be made by the Board of Agriculture and Fisheries under s. 17 (p. 79, *ante*) of the Act of 1907.

(4) In this Act references to a parish council shall, in the case of a rural parish not having a parish council, include references to the parish meeting: Provided that any property by this Act transferred to and vested in a parish council shall in such a case be transferred to and vested in the chairman of the parish meeting and the overseers of the parish.

(5) Any notice required by this Act to be served or given may be sent by registered post.

47. *Short title, commencement, extent, and repeal.*—(1) This Act may be cited as the Small Holdings and Allotments Act, 1907, and, so far as it relates to small holdings, shall be construed with the Small Holdings Act, 1892, and may be cited with that Act as the Small Holdings Acts, 1892 and 1907, and so far as it relates to allotments, shall be construed with the Allotment Acts, and may be cited with those Acts as the Allotments Acts, 1887 to 1907.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(3) This Act shall not extend to Scotland or Ireland.

(4) The enactments mentioned in the Second Schedule to this Act are hereby repealed, except as to Scotland, to the extent specified in the third column of that schedule.

SCHEDULES.

FIRST SCHEDULE.

PART I.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A COUNCIL.

(1) The order shall be in the prescribed form, (a) and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the council and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (b) and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, (c) but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of

the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly (*d*).

(a) "Prescribed" means prescribed by regulations made by the Board (section 46 (2)).

(b) The provisions of the Lands Clauses Acts (for an enumeration of which see note (a) to s. 3 (1) of the Act of 1892, p. 24, *ante*), so far as they seem applicable to the acquisition of land by councils for the purposes of small holdings, will be found in the Appendix of Statutes. The Board will, no doubt, issue a general order prescribing the necessary adaptations to be made in the provisions of the Acts.

(c) Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, are also given in the Appendix, p. 180, *post*.

(d) The modification made by clause (1) must be noted, there will be no settlement of compensation by justices or by a jury, as every question of disputed compensation must be determined by a single arbitrator appointed by the Board.

(2) The order shall be published by the council in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land as may be prescribed.

(3) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but if such an objection has been presented and has not been withdrawn the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the council and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry. (a)

(a) As to local inquiries, see s. 42 of the Act of 1907; and as to the hearing thereof of counsel or expert witnesses, see (5), *infra*.

(4) Before confirming the order the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(5) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under

this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised by or under this Act to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(6) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

(7) In construing, for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the council shall be deemed to be the promoters of the undertaking. (a)

(a) This clause must be substituted for the definition of the expressions "the special Act" and "promoters" contained in s. 2 of the Lands Clauses Consolidation Act, 1845.

(8) Where the land is glebe land or other land belonging to an ecclesiastical benefice the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners, to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice. (a)

(a) This clause creates an exception to the general application of ss. 69-80 of the Lands Clauses Consolidation Act, 1845, for which see p. 150, *post*.

PART II.

PROVISIONS AS TO THE COMPULSORY HIRING OF LAND
BY A COUNCIL.

(1) The Board shall make regulations for the purpose of carrying the order into effect and of protecting the council and the persons interested in the land, and the order shall incorporate such regulations, together with such provisions of the Lands Clauses Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for that purpose. (a)

(a) See notes (b) and (c) on p. 110, *ante*.

It must be remembered that the provisions of Part I. of the Schedule also apply to the case of land compulsorily hired, with the modifications made by Part II. Land cannot be hired compulsorily for, in the first instance, less than fourteen or more than thirty-five years (s. 26 (2), p. 88, *ante*).

(2) The order authorising the land to be hired compulsorily shall determine the terms and conditions of the hiring other than the rent, and in particular—

- (a) shall provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy, on the council quitting the land compensation for any depreciation of the land by reason of any failure by the council, or any person deriving title under them, to observe such covenants or by reason of any user of the land by the council or such person as aforesaid, and (unless otherwise agreed) to keep the buildings and premises demised in repair ; and
- (b) shall not authorise the breaking up of pasture unless the Board are satisfied that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings cannot otherwise be successfully cultivated ; and
- (c) shall not except with the consent of the landlord confer on the council any right to fell or cut timber or trees or any right to take, sell, or carry away any minerals,

gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings or allotments, and except upon payment of compensation for minerals, gravel, sand, or clay so used.

(3) The determination of—

- (a) The amount of the rent to be paid by the council for the land compulsorily hired ;
- (b) The amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise ; and
- (c) Where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of that term ;

shall in default of agreement be by valuation by a single valuer appointed by the Board : Provided that if the land hired is in the occupation of a tenant he may by notice in writing served on the council before the determination of his tenancy require that any claim by him against the council which, under the Agricultural Holdings (England) Acts, 1883 to 1906, might be referred to arbitration under those Acts shall be so referred, and in such case those claims shall be determined by arbitration under those Acts and not by valuation under this Act (a).

(a) An order authorising a council to hire land compulsorily must provide for all the terms and conditions of the hiring, other than the rent and the compensation to be paid, which is to be settled by valuation. Division (c) of the subsection affects the rights of persons not parties to the hiring, for it provides that where part only of the lessor's holding is hired, then if the lessor is himself a tenant, the rent to be paid by him to his superior landlord for the unhired part of the holding, is to be determined by the valuer, and the superior landlord will be a person interested in the valuation within the meaning of subs. (6), p. 114, *post*. See also (5) *infra*.

For the Agricultural Holdings (England) Acts, see Appendix, *post*.

(4) The valuer, in fixing the rent to be paid for the land compulsorily hired, shall take into consideration the rent (if any)

at which the land has been let and the annual value at which the land is assessed for purposes of income-tax or rating, the loss (if any) caused to the owner by severance, the terms and conditions of the hiring, including any reservation of sporting or fishing rights, and all the other circumstances connected with the land, but shall not make any allowance in respect of any use to which the land compulsorily hired might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land under this Act (a).

(a) As to resumption of possession see s. 33, p. 95, *ante*.

(5) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land compulsorily hired shall, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant (a).

(a) See subs. (8) *ante*, and the note thereto.

(6) Any person interested in any valuation shall give the valuer all such assistance, information, and explanations as he may require, and shall produce to the valuer, or give him access to, all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purposes of valuation, and such expenses as the valuer certifies to have been properly incurred by any person in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, shall be paid by the council.

(7) On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation, shall in default of agreement be determined by arbitration (a).

(a) See subs. (2) (a) for the matters giving rise to a claim for depreciation.

SECOND SCHEDULE.

[SO FAR AS IT RELATES TO SMALL HOLDINGS.]

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
55 & 56 Vict. c. 31.	The Small Holdings Act, 1892.	<p>Subsection (2) of section one.</p> <p>Section two.</p> <p>Subsection (2) of section four to "Provided that"</p> <p>In subsection (3) of section four the words "in the case of small holdings which may be let."</p> <p>Section five.</p> <p>In section eleven the words "and then to the person or persons whose lands immediately adjoin the holding."</p> <p>Section sixteen.</p> <p>In section twenty the words from "and the expression 'electoral division'" to "shall mean ward," and the definition of county elector.</p>
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	<p>In subsection (3) of section six the words "and of applying for the election of allotment managers," and "or the Allotments Act, 1890," and subsection (4) of the same section from "and for the purposes of section sixteen of the Small Holdings Act, 1892," to the end of the section.</p>

APPENDICES.

APPENDIX I.

FORMS.

NOTE.—*For other Forms relating to the acquisition of land, registration of title, sale of small holdings, etc., see Schedule to the LAND REGISTRY (SMALL HOLDINGS) RULES, 1892, Schedules to the LANDS CLAUSES CONSOLIDATION ACT, 1845, and Schedule to the PUBLIC HEALTH ACT, 1875 (post). For list of Forms see INDEX.*

ADVERTISEMENT OF SCHEME.

UNDER SECTION 4 (1) OF THE SMALL HOLDINGS ACT, 1907.

- - - - COUNTY COUNCIL.

NOTICE.

THE SMALL HOLDINGS ACTS, 1892 AND 1907.

Scheme as to the Provision of Small Holdings.

By direction of the Board of Agriculture and Fisheries notice is hereby given by the county council of the administrative county of that under the provisions of the Small Holdings Act, 1907, a draft scheme for the provision of small holdings in the county of has been submitted to the Board of Agriculture and Fisheries for consideration and confirmation, and that the Board proposes to make certain modifications therein [*or as the case may be*].

Any objections or suggestions respecting the draft scheme or the modifications thereof may be made to the Board of Agriculture and Fisheries in writing within days from the date of this Notice, addressed to "The Secretary, Board of Agriculture and Fisheries,

3, St. James's Square, London, S.W." A copy of the draft scheme and of the proposed modifications may be inspected free of cost on each week-day during the said period between the hours of — a.m. and — p.m. at the offices of the county council, at the County Hall, Street, , and at the offices of the Board of Agriculture and Fisheries in London.

Dated the day of 19 ,

(Signed) - - - - -

Clerk to the County Council.

NOTICE TO TREAT ON COMPULSORY ACQUISITION OF LAND.

SMALL HOLDINGS ACT, 1907, AND ORDER MADE PURSUANT THERETO
ON THE DAY OF .

The county council for the administrative county of (hereinafter called the council) hereby give you notice that they require to purchase [*or hire*] and take for the purposes of and under the provisions of the Small Holdings Acts, 1892 and 1907, and under an order made thereunder on the day of the lands mentioned and described in the schedule hereto and delineated on the plan attached hereto and thereon coloured red, which lands the council are authorised to purchase [*or hire*] and take by the order aforesaid.

And the council hereby demand from you and from each and every of you the particulars of your respective estates and interests in the said lands, and of the claims made by you and each and every of you in respect thereof, which particulars must be delivered to the undersigned, the clerk to the council, at his office at in , in the county of within 21 days after the service of this notice.

And the council hereby give you and each and every of you further notice that they are willing to treat with you and with each and every of you for the purchase [*or hire*] of the said lands, and as to the compensation to be made for the damage that you and each and every of you may sustain by reason of the acquisition of the said lands for the purposes aforesaid, and for which you or each or any of you may be entitled to be compensated under the said Act or the said order.

And the council hereby give you further notice that if for 21 days after the service hereof you, or any of you respectively, shall fail to

state the particulars of your respective claims, or shall not agree as to the amount of compensation [*and rent*] to be paid to you respectively by the council in respect of the acquisition by the council of the said lands, the council will require the amount of such compensation [*and rent*] to be settled in the manner provided by the said Act.

Dated this day of

(Signed)

Clerk to the County Council.

To [*owner*] of
and to all other persons having or claiming to have or enabled to sell
[*or lease*] any estate or interest in the said lands.

THE SCHEDULE ABOVE REFERRED TO.

(Describe the lands as specified in the order authorising the acquisition thereof, and annex plan.)

DECLARATION OF ARBITRATOR APPOINTED TO DETERMINE
COMPENSATION ON COMPULSORY ACQUISITION OF LAND (Lands
Clauses Act, 1845, s. 33).

I A. B. do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Small Holdings Act, 1907, and the order dated the day of relating to the compulsory acquisition by the county council of the administrative county of of land in the parish of in the county of for the purposes of the Small Holdings Acts, 1892 and 1907.

A.B.

Made and subscribed in the presence
of
C.D.

A Justice of the Peace for

RULES AS TO SALE AND LETTING OF SMALL HOLDINGS.

RULES made by the COUNTY COUNCIL of _____ as to the MODE and CONDITIONS of SALE and LETTING of SMALL HOLDINGS under the SMALL HOLDINGS ACTS, 1892 and 1907.

1. Upon the acquisition of any land required for the purpose of the Acts, the county council shall cause to be set out upon a plan the acreage, situation, and boundaries of each small holding which they propose to sell or let, and the price or rent of the same. Each small holding shall be assigned a distinctive number, and a register of the same shall be kept by the clerk of the county council. The plan shall be deposited in such convenient place as the county council may from time to time determine, and shall be open to inspection, free of charge, at all reasonable times by persons applying to inspect the same.

2. Notice of the deposit of the said plan for inspection, and of the fact that the council are prepared to receive applications for small holdings, shall be given by advertisement in some newspaper circulating in the district, or in such other manner as the county council may from time to time determine.

3. Applications to purchase or hire a small holding shall be in the form and contain the particulars set out in the Appendix to these Rules. The county council will print and furnish forms of application free of cost to any person applying for the same.

4. The purchase shall be completed at the expiration of one month after the purchase unless otherwise agreed on.

5. The amount for the time being unpaid in respect of the purchase money of a small holding may be discharged, and any terminable annuity may at any time be redeemed in the following manner:—the owner of the small holding shall be debited in account with the capital amount of the unpaid purchase money, and with the interest accruing due each half year on the amount of such capital remaining from time to time unpaid, and he shall be credited with the amount of any annuity or other payments made by him with half-yearly rests: the money to be paid on redemption shall be the balance shown by any such account.

6. An agreement shall be made between the county council and an intended tenant and shall be executed by the council and such tenant, and shall contain or refer to the particulars set out in the Appendix to these Rules, or be to the like effect.

7. The county council may from time to time alter any holding which for the time being may be unsold or unlet or the terms thereof, and these rules shall apply to any holding or terms so altered.

8. These rules may be executed by the Small Holdings and Allotments Committee of the county council or by any sub-committee thereof.

APPENDIX.

(1) FORM of APPLICATION to purchase a SMALL HOLDING.

(2) FORM of APPLICATION to Hire a SMALL HOLDING.

For such forms see post.

(8) PARTICULARS to be contained or referred to in the AGREEMENT to be made between the COUNTY COUNCIL and an intended TENANT of a SMALL HOLDING.

The holding shall be held subject to the provisions of the Small Holdings Acts, 1892 and 1907 relating to the holdings let by a county council, and in particular as follows :—

The holdings shall not be divided, sub-divided, assigned, let or sub-let without the consent of the council.

The tenant shall himself cultivate the holding, which shall not be used for any purpose other than agriculture, including horticulture, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like.

The holding shall be cultivated in a husbandlike manner, according to the custom of the country.

No dwelling-house or building on the holding shall be used for the sale of intoxicating liquors, nor shall any dwelling-house be erected on the holding without the consent of the council.

If any condition or term of letting is broken, the council may, after giving the tenant an opportunity of remedying the breach (if it is capable of remedy), determine the tenancy.

The tenant may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and remove any tool-house, shed, greenhouse, fowl-house, or pigsty, built or acquired by him for which he has no claim for compensation.

NOTE—If any special provisions as to kind or succession of crops, or method of cultivation, or as to repair of buildings be desired, they should be inserted in the agreement. If the land has been hired by the county council, there should be inserted in the agreement any provisions which may be desirable for the tenant to observe, regard being had to the terms on which the council hired the land.

APPLICATION TO PURCHASE A SMALL HOLDING.

THE SMALL HOLDINGS ACTS, 1892 AND 1907.

To the *County Council.*

I, the undersigned, being willing myself to cultivate a small holding hereby make application to purchase any small holding of not exceeding _____ acres as shown on the plan of the small holdings situate at _____, in the parish of _____, in the county of _____, which plan is deposited in the office of the clerk of the county council, and has been inspected by me, and I am willing to abide by any allotment by ballot or any other method of allotment that may be adopted, and I will pay one-fifth of the purchase money down on completion, and will pay the balance by equal half-yearly instalments to cover principal and interest in a period of not exceeding _____ years [*or as may be*], and I hereby express myself as willing to be bound by all the conditions applicable to a small holder under the Small Holdings Acts, 1892 and 1907, and any regulations of the county council from time to time in force.

Full Christian and surname {

Residence (postal address) {

Age last birthday

Married or single ?

What is now your occupation, trade, }
or business ?

What other occupation, trades, &c., }
if any, have you had ?

Have you ever rented land for your }
own cultivation ? If so, give par- }
ticulars of land, where situated, }
and the name of the owner . . . }

Can you give evidence or references }
as to your being likely to keep a }
small holding in a proper state of }
cultivation and of being able to }
pay the balance of the purchase }
money ? If so do so }

Do you propose to reside on the }
holding? }

Have you any, and, if so, what, capital?

This application must be sent to the clerk of the county council, County Hall, , so that he receives it not later than the day of , 1908.

The following particulars should be annexed to or printed on a fly-sheet to the form of application :—

Any small holding which may be sold by a county council must exceed *one acre*, but is not to exceed *50 acres*, or if it exceeds *50 acres* its annual value, for the purposes of the income tax, must not exceed £50.

Every small holding sold by a county council under the Acts must, for a term of 20 years from the date of the sale, and thereafter so long as any part of the purchase money remains unpaid, be held subject to the following conditions :—

- (a) That any periodical payments due in respect of the purchase money shall be duly made.
- (b) That the holding shall not be divided, subdivided, assigned, let or sub-let without the consent of the county council.
- (c) That the holding shall be cultivated by the owner, and shall not be used for any purpose other than agriculture.
- (d) That not more than one dwelling-house shall be erected on the holding without the consent of the county council.
- (e) That any dwelling-house erected on the holding shall comply with such requirements as the county council may impose for securing healthiness and freedom from over-crowding.
- (f) That no dwelling-house or building on the holding shall be used for the sale of intoxicating liquors.
- (g) In the case of any holding on which in the opinion of the county council a dwelling-house ought not to be erected, that no dwelling-house shall be erected on the holding without the consent of the county council.
- (h) That the holding shall be properly cultivated.

If any such condition is broken, the council may, after giving the owner an opportunity of remedying the breach, if it is capable of remedy, cause the holding to be sold, and may themselves purchase the holding.

If on the decease of the owner, while the holding is subject to the above conditions, the holding would, by reason of any devise, bequest, intestacy or otherwise, become sub-divided, the council may require the holding to be sold to themselves or to be sold within twelve months after such decease to some one person, and if default

is made in so selling the holding, the council may cause the holding to be sold.

Any such sale by the county council may be made either subject to the charge in respect of purchase money or free, wholly or partly, from that charge, and in either case the provisions of the Acts with respect to the purchase money are to apply in like manner as if the sale were the first sale of a small holding under the Acts.

The proceeds of the sale are to be applied in discharge of any unpaid purchase money for the holding, or redemption of any rent-charge or terminable annuity which is not to continue a charge on the holding, and subject as aforesaid are to be paid to the person appearing to the council to be entitled to receive the same.

The county council may under special circumstances, to be recorded in their Minutes, sell or consent to the sale of a small holding free from all or any of the above conditions, and may give such consent on such terms as they think fit.

Nothing in or done under the Acts is to derogate from the effect of any building or sanitary byelaws for the time being in force.

If at any time after the restrictive conditions above mentioned have ceased to attach to a small holding, the owner of the holding desires to use the holding for purposes other than agriculture, he is required before so doing, whether the holding is situate within a town or built upon or not, to offer the holding for sale, first to the county council from whom the holding was purchased, and next to the person or persons (if any) then entitled to the lands from which the holding was originally severed.

The expressions "agriculture" and "cultivation" include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables and the like.

AGREEMENT FOR SALE OF SMALL HOLDING.

THIS AGREEMENT made the day of between the county council for the administrative county of (hereinafter called the council) of the one part and of (hereinafter called the purchaser) of the other part witnesseth as follows (that is to say):—

1. The council will sell and the purchaser will purchase all that small holding or piece of land situate, etc., and containing acres or thereabouts and numbered on the plan in the possession of the council which has been signed by the purchaser by way of identification together with the dwelling-house and [enumerate other buildings] now erected thereon [or as may be]. (a) .

(a) Small Holdings Act, 1892, s. 8, p. 38, ante.

2. In consideration therefor the purchaser will pay to the council the sum of £ as purchase money which sum shall be paid and satisfied as follows :—

(a) The sum of £ [at least one-fifth of the purchase money] shall be paid on the completion of the purchase. (a)

(b) The sum of £ [not more than one-fourth of the purchase money] shall be satisfied by the payment of a perpetual rent charge of £ secured on and issuing out of the said small holding and premises. (a)

(c) The residue of £ shall be secured by a charge on the said small holding and premises and shall be paid by half-yearly instalments of £ together with interest at the rate of per centum per annum on the amount of the principal sum for the time being remaining unpaid, such half-yearly payments to be made on the day of and the day of in every year and the first of such payments to be made on the first of such days as shall fall after the actual completion of the purchase hereby contemplated,

or

The residue of £ shall be satisfied by the payment of an annuity of £ for years to be paid by equal half-yearly instalments of £ on the day of and the day of in every year the first of such payments to be made on the day of next after the date of the actual completion of the purchase hereby contemplated and such annuity shall be charged on the said small holding and premises. (b)

3. The said purchase shall be completed on the day of next at the offices of the clerk to the council at the County Hall Street in and the purchaser shall thereupon pay the said sum of £ as part of the purchase money and shall execute such documents as may be necessary for effecting the said charges on the said small holdings and premises. (c)

4. If for any reason other than the wilful default of the council the purchase is not completed on the said day of next the purchaser shall pay interest at the rate of per centum per annum on the said sum of £ to be paid on completion from the said day of next up to the day of actual completion.

5. The title of the purchaser to the said small holding and premises and the charges thereon in favour of the council shall be registered at the Land Registry at the expense of the council. (d)

(a) Small Holdings Act, 1892, s. 6, p. 33, *ante*.

(b) The period of repayment must not extend over more than 50 years (Small Holdings Act, 1892, s. 6).

(c) See Small Holdings Act, 1892, s. 6 (2), p. 34, *ante*.

(d) Small Holdings Act, 1892, s. 6 (1), p. 33, *ante*.

6. The purchaser shall hold the said small holding and premises subject to all the conditions and restrictions imposed by the Small Holdings Acts, 1892 and 1907, or by either of them.

In witness whereof, etc.

[*This document must be executed as a deed, and bear a 10s. stamp*].

TRANSFER OF SMALL HOLDING ON SALE BY COUNTY COUNCIL (EXTENDED FORM).

LAND REGISTRY.

LAND TRANSFER ACTS, 1875 AND 1897, AND SMALL HOLDINGS
ACTS, 1892 AND 1907.

No. of Title.

of 19 . In consideration of £ and of
the charge of £ for years with instalments of principal
and interest combined of £ payable on the day of
and the day of in each year [*or otherwise as provided
by s. 6 of the Small Holdings Act, 1892*] secured by instrument of
even date herewith the county council of the administrative county
of (hereinafter called the council) hereby transfer to
of the parish of in the county of (hereinafter called the
transferee) the plot of land shown and edged with red on the map or
plan annexed hereto, marked and sealed by the council and
signed by the transferee, and containing acres roads
and poles, being part of the land comprised in the title above
referred to, for the purpose of a small holding under the Small
Holdings Acts, 1892 and 1907 TOGETHER with such part of the roads
marked "occupation road" on the said map or plan as abut upon and
are co-extensive with the said plot of land AND TOGETHER with a full
right of way at all times and for all purposes in common with the
council their successors grantees and assigns over and along the whole
of each of the occupation roads shown on the said map or plan any
part of which abuts upon the said plot of land and over and along
each of the said occupation roads which runs into or is connected
with an occupation road any part of which abuts on the said plot of
land.

THE TRANSFeree for himself and his heirs executors administrators
and assigns hereby covenants with the council their successors
grantees and assigns as follows:—

(1) That he and they will at his or their own expense and to the
satisfaction of the council their successors grantees and assigns
maintain and keep in repair the fences on the and

sides of the said plot of land and also all boundary stones gates stiles and drains on the said plot of land and also will at the like expense maintain and keep in repair of the occupation roads as abut on the said plot of land.

(2) That if he or they shall not duly fulfil the covenant hereinbefore contained it shall be lawful for the council to do all works and things necessary for carrying out such maintenance and repairs as aforesaid and to charge such sums as they may from time to time think proper for such maintenance and repairs together with all necessary expenses upon the transferee his heirs executors administrators and assigns and may recover the same from him or them to such an amount and in such proportion as the council shall direct having regard to the size and value and position of the small holding hereby transferred.

(3) That all such sums shall be due to the council on demand and in default may be recovered by the council by distress and such distress may be made of or on the tenant of the said plot of land as if the tenant were the owner liable to the payment thereof and such sums shall be paid by such tenant on demand thereof and the money so paid by the tenant shall be deemed a payment made on account of his rent and shall be allowed by his landlord accordingly.

(4) That it shall not be obligatory on the council to levy any amount so charged as aforesaid annually or at any stated period but it shall be lawful for them to defer levying payment of any sums due until they are of a sufficiently reasonable amount to warrant collection, and that in default of distress it shall be lawful for the council to recover such amount as a civil debt.

(5) That he or they will not sell or transfer or convey the said plot of land to any person without the consent of the council (which consent shall not be unreasonably withheld) and that every conveyance or instrument of transfer to a purchaser shall contain covenants on the part of the purchaser and powers to the council similar to the covenants and powers herein contained provided always that the covenants on the part of the transferee his heirs executors administrators and assigns and the powers of entry and other powers hereby given to the council shall be exercisable only during the life of the survivor of the issue now living of Her late Majesty Queen Victoria and 21 years after the death of such survivor and during such further period (if any) as the law will allow.

AND the council reserve to themselves power to make arrangements under s. 3, subsec. 3, of the Small Holdings Act, 1892, as part of the agreement for the sale of the above mentioned small holding.

[Here follows the attestation. The council should seal in the mode usually adopted by them in executing deeds.]

CHARGE ON A SMALL HOLDING.

LAND REGISTRY.

LAND TRANSFER ACTS, 1875 AND 1897, AND SMALL HOLDINGS
ACTS, 1892 AND 1907.

No. of Title charged

of 19 . To secure £ part of the purchase money of the land [shown and edged with red on the map, marked signed by me, being part of the land] comprised in the title above referred to I, hereby charge the said land with the payment to the county council of the principal sum of £ payable by half-yearly instalments of £ , to cover principal and interest combined at £4 0s. 0d., per cent. per annum on the amount for the time being remaining unpaid on the 25th day of March and the 29th day of September in every year, the first payment to be made on the day of 190 .

Signature of transferee of land :—

Verification.

I am acquainted with the above-named and I certify that he is the same person as the who is named in the Instrument of Transfer, marked A , now produced to me, dated the of 190 , and that I saw him this day sign seal and deliver the above Instrument.

Date _____

AGREEMENT POSTPONING PAYMENT OF INSTALMENTS OF
PURCHASE MONEY OF A SMALL HOLDING UNDER S. 6 (6) OF THE
SMALL HOLDINGS ACT, 1892.

THIS AGREEMENT, made the day of , between the county council for the administrative county of , (hereinafter called the council) of the one part and [the small holder] of (hereinafter called the small holder) of the other part

WHEREAS by a statutory transfer dated the day of the council conveyed the small holding [description] to the small holder in fee simple subject to the provisions of the Small Holdings Acts, 1892 and 1907, [or as the case may be] and in part consideration therefor the small holder created a statutory annuity [or as the case may be] of

£ for years, payable to the council by half yearly instal-
ments of £ each on the day of and the
day of in every year.

NOW IT IS HEREBY AGREED as follows :—

1. The small holder will forthwith erect a dwelling-house on the said small holding of the value of at least £ , and in all respects in accordance with such requirements as the council may impose, and to the satisfaction of the surveyor of the council [*or whatever may be the improvement of the small holding on which the small holder is to expend money*].

2. In consideration therefor the council will not require the small holder to pay the said annuity of £ during the next years [*not exceeding five years*] provided that nothing herein contained shall be construed to release the small holder from such payments after the expiration of the said years, and such annuity shall be paid by the small holder after the expiration of the said years up till and including the day of , [*being years later than the last payment would be due had there not been a postponement of payments*].

IN WITNESS, etc.

[*This document must be executed as a deed and bear a 10s. stamp.*]

APPLICATION TO HIRE A SMALL HOLDING.

THE SMALL HOLDINGS ACTS, 1892 and 1907.

To the County Council of .

I, the undersigned, being willing myself to cultivate the small holding, hereby make application to hire the small holding numbered situate at in the County of and containing acres or thereabouts, for an annual rent of £ subject to the conditions of the above Acts.

1. Name (in full).
2. Married or single.
3. Residence (postal address).
4. Age and physical condition of the applicant.
5. Occupation.
6. Age and sex of children.
7. No. of children living at home.
8. Wife's experience.
9. What capital has the applicant.
10. What experience the applicant has had in cultivating land.
11. What evidence or reference can be given as to his being likely to keep the holding in a proper state of cultivation.

12. Do you propose to reside on the holding.

Signature of Applicant.

Date.

A copy of the form of agreement into which the applicant will be required to enter in the event of his application being successful should be endorsed upon or appended as a fly sheet to the form of application.

LEASE BY COUNCIL OF A SMALL HOLDING.

THIS INDENTURE made the day of BETWEEN the county council of the administrative county of (hereinafter called the council) of the one part and [tenant] of in the parish of in the county of (hereinafter called the tenant) of the other part. WITNESSETH that in consideration of the rent and covenants hereinafter reserved and contained the council hereby demises unto the tenant ALL THAT small holding or piece of land situate at in the parish of in the county of and containing acres roods and poles or thereabouts shown and edged with red on the plan annexed hereto and thereon numbered (hereinafter called the holding) TO HOLD the same unto the tenant for the term of years from the day of YIELDING and PAYING therefor the yearly rent of £ payable in four quarterly instalments on the usual quarter days the first of such quarterly payments to be made on the day of next.

THE TENANT covenants with the council

(1) That he will during the said term pay to the council in respect of the holding the yearly rent of £ by four equal quarterly payments on the usual quarter days in every year.

(2) That he will at all times during the said term pay all rates taxes and assessments payable in respect of the holding or any buildings to be erected thereon except landlord's property tax.

(3) That he will not divide subdivide assign let or sublet the holding without the consent in writing of the council which consent may be refused or withheld by the council without giving any reason therefor.

(4) That he will himself cultivate the holding in a husbandlike manner according to the custom of the country and will not use it for any purposes other than for agriculture, horticulture, husbandry, keeping and breeding of live stock, poultry or bees or the growth of fruit, vegetables or the like.

(5) That he will not erect any dwelling-house or other building upon the holding without the consent in writing of the council, and in the event of such consent being given will comply with all such

K

requirements as the council shall impose as to the construction thereof and for securing healthiness and freedom from overcrowding.

(6) That no building now or at any time hereafter erected on the holding shall during the said term be used for the sale of intoxicating liquors.

[*Add any special covenants required by the nature or state of the holding.*]

(7) That he will at all reasonable times allow the council, by any member or members or officer or servant thereof, to enter upon the holding for the purpose of ascertaining that the covenants hereinbefore contained are being duly observed and performed.

(8) That he will at the end or sooner determination of the term hereby granted peaceably deliver up the holding and allow the council to re-enter.

THE COUNCIL covenants with the tenant that the tenant paying the rent and observing and performing the covenants hereinbefore reserved and expressed shall peaceably and quietly enjoy the holding and shall not be disturbed by any lawful act of the council or of any person claiming under the council.

AND it is hereby agreed that if the tenant commits any breach of any of the covenants on his part hereinbefore contained and in the case of any breach capable of remedy does not remedy the same within days after the council shall have given him notice so to do or if the rent hereby reserved or any quarterly payment thereof shall remain unpaid for 21 days after the same shall become due it shall be lawful for the council to re-enter upon the holding and thereupon the term hereby granted shall be determined AND that if the tenant shall die during the continuance of the said term and the holding would thereupon become subdivided owing to any bequest by the tenant or his intestacy or otherwise the council may require the residue of the said term to be assigned to some one person within 12 months after such decease and, in default of such requirement being complied with within such time the term hereby granted shall thereupon be determined.

IN WITNESS, etc.

AGREEMENT by COUNTY COUNCIL to ADVANCE PART of PURCHASE MONEY of SMALL HOLDING, in pursuance of section 17 of the Small Holdings Act, 1892.

THIS AGREEMENT is made the day of between the county council of the administrative county of (hereinafter called the council) of the one part and [*the small holder*] of, etc., (hereinafter called the purchaser) of the other part.

WHEREAS the purchaser is the tenant of a small holding [*add description or parcels*] held by him of [*landlord*] of, etc., (hereinafter called the landlord) under a yearly [*or describe the tenancy*] tenancy.

AND WHEREAS the landlord has agreed to sell the said small holding to the purchaser for the sum of £ .

AND WHEREAS the council in pursuance of the powers vested in them under and by virtue of the Small Holdings Acts, 1892 and 1907, have consented to advance to the purchaser on the security of the said small holding the sum of £ [not exceeding four-fifths of the purchase money]. (a)

NOW IT IS HEREBY AGREED as follows:—

1. The council will advance to the purchaser the said sum of £ which shall be applied by the purchaser in part payment of the purchase money for the said small holding.

2. The said sum of £ shall be advanced to the purchaser on the completion of the said purchase and thereupon the purchaser shall execute such deeds and documents and do all things necessary to secure the repayment to the council of the said advance.

3. The said sum of £ shall be repaid by the purchaser to the council in manner following:—

(a) The sum of £ [not exceeding one-fourth of the amount advanced] shall be repaid or satisfied by the payment of a perpetual rent-charge of £ to be secured on and issuing out of the said small holding. (b)

(b) The residue of £ shall be secured by a charge on the said small holding and shall be repaid by half-yearly instalments of £ together with interest at the rate of per cent. per ann. on the amount of the principal sum for the time being remaining unpaid, such half-yearly payments to be made on the day of and the day of in every year and the first of such payments to be made on the day of next [at the option of the purchaser.]

or

The residue of £ will be repaid or satisfied by the payment of an annuity of £ for years to be paid by half-yearly instalments of £ each on the day of and the day of in every year the first of such instalments to be paid on the day of next and such annuity shall be charged on the said small holding.

4. The purchaser shall hold the small holding subject to all the conditions and restrictions imposed by the Small Holdings Acts, 1892 and 1907.

In witness, etc.

[This document must be executed as a deed and bear a 10s. stamp.]

(a) Small Holdings Act, 1892, s. 17 (1), p. 51, ante.

(b) Small Holdings Act, 1892, ss. 6, 17.

THIS AGREEMENT made the day of , BETWEEN
of the one part, and of the other part

WHEREBY the parties hereto hereby mutually agree as follows, viz:—

2. The contractor is to provide everything of every sort and kind which may be necessary and requisite for the due and proper execution of the several works included in the contract according to the true intent and meaning of the drawings and specifications taken together, whether the same may or may not be particularly described in the specification or shown on the drawings, provided that the same are reasonably and obviously to be inferred therefrom, and in case of any discrepancy between the drawings and the specification the architect is to decide which shall be followed.

4. Complete copies of the drawings and specifications signed by the architect are to be furnished by him to the contractors for their own use, and the same or copies thereof are to be kept on the buildings in charge of a competent foreman, who is to be constantly kept on the ground by the contractor, and to whom instructions can be given by the architect. The contractor shall not sublet the works or any part thereof without the consent of the architect.

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tractor to dismiss any person in the contractor's employ upon the works, who may be incompetent or misconduct himself, and the contractor is forthwith to comply with such requirement.

6. The contractor shall not vary or deviate from the drawings or specification, or execute any extra work of any kind whatsoever, except upon the authority of the architect, to be sufficiently shown by any order in writing, or by any plan or drawing, expressly given and signed by him, as an extra or variation. In cases of day work, all vouchers for the same are to be delivered to the architect at latest during the week following that in which the work may have been done, and only such day work is to be allowed for, as such, as may have been authorized by the architect to be so done, unless the work cannot from its character be properly measured and valued.

7. Any authority given by the architect for any alteration or addition in or to the works is not to vitiate the contract, but all additions, omissions, or variations made in carrying out the works for which a price may not have been previously agreed upon, are to be measured and valued, and certified for by the architect, and added to or deducted from the amount of the contract as the case may be at fair measure and value.

8. All work and materials brought and left upon the ground by the contractor or by his order, for the purpose of forming part of the works, are to be considered to be the property of the smallholder.

9. The architect is to have full power to require the removal from the premises of all materials which in his opinion are not in accordance with the specification, and in case of default the smallholder is to be at liberty to employ other persons to remove the same without being answerable or accountable for any loss or damage that may arise or happen to such materials; and the architect is also to have full power to require other proper materials to be substituted; and in case of default, the smallholder may cause the same to be supplied, and all costs which may attend such removal and substitution are to be borne by the contractor.

10. Should any of the works be, in the opinion of the architect, executed with improper materials or defective workmanship, the contractor is, when required by the architect during the progress of the work, forthwith to re-execute the same, and to substitute proper materials and workmanship, and, in case of default of the contractor in so doing within a reasonable time, the architect is to have full power to employ other persons to re-execute the work, and the cost thereof is to be borne by the contractor.

11. Any defects, shrinkage and other faults which may appear within six months from the completion of the building, and arising out of defective or improper materials or workmanship are, upon the direction of the architect, to be amended and made good by the contractor at his own cost, unless the architect shall decide that he

ought to be paid for the same, and, in case of default, the smallholder may recover from the contractor the cost of making good the works.

12. The building from the commencement of the works to the completion of the same, is to be under the contractor's charge, who shall be responsible for, and make good all injuries, damages and repairs occasioned or rendered necessary to the same, by fire or by causes over which the contractor shall have control, and the contractor shall hold the smallholder harmless from any claims for injuries to persons or for structural damage to property happening from any neglect, default, want of proper care or misconduct on the part of the contractor or of anyone in his employ during the execution of the works, and the contractor shall be responsible for all claims under the Workmen's Compensation Act, 1906.

13. The smallholder is at all times to have free access to the works, and is to have full power to send workmen upon the premises to execute fittings and other works not included in the contract, for whose operations the contractor is to afford every reasonable facility during ordinary working hours, provided that such operations shall be carried on in such a manner as not to impede the progress of the works included in the contract, but the contractor shall not be responsible for any damage which may happen to or be occasioned by any such fittings or other works.

14. The contractor is to complete the whole of the works (except painting and papering, or such other works as the architect may desire to delay), within calendar months after the commencement of the same, unless the works be delayed by reason of any inclement weather, or causes not under the contractor's control, or in case of combination of workmen, or strikes, or lock-out affecting any of the building trades, for which due allowance shall be made by the architect, and then the contractor is to complete the works within such time as the architect shall consider to be reasonable, and shall from time to time in writing appoint.

15. If the contractor shall become bankrupt, or compound with or make any assignment for the benefit of his creditors, or shall suspend or, in the opinion of the architect, shall unduly delay the performance of his part of the contract (except on account of causes mentioned in Clause 14, or on account of being restrained or hindered under any proceedings taken by parties interested in any neighbouring property, or in consequence of not having proper instructions, for which the contractor shall have duly applied), the smallholder either by himself or by the architect, may give to the contractor or his assignee or trustee, as the case may be, notice requiring the works to be proceeded with, and in case of default on the part of the contractor or his assignee or trustee for a period of days, it shall be lawful for the smallholder, or for the architect, or any other person appointed by the smallholder, to enter upon and take possession of

the works, and to employ any other person or persons to carry on and complete the same, and to authorise him or them to use the plant, materials, and property of the contractor upon the works, and the costs and charges incurred in any way in carrying on and completing the said works are to be paid to the smallholder by the contractor, or may be set off by the smallholder against any money due, or to become due, to the contractor.

16. The small holder shall pay to the contractor for the full and perfect completion of this contract, the sum of £ . But if the architect shall direct any addition to, or omission of, or variation from the works, the value of such addition, omission, or variation shall be added to or deducted from the said sum of £ as provided in Clause 7, as the case may be; and if there should be found any error in the detailed bills of quantities supplied, such error shall be rectified, and an addition be made to the contractor or deducted from him, as the case may be, in respect of such error.

17. When the value of the works executed and not included in any former certificate shall from time to time amount to the sum of £ , or otherwise at the architect's reasonable discretion, the contractor is to be entitled to receive payment at the rate of 80 per cent. upon such value until the difference between the percentage and the value of the works executed shall amount to per cent. upon the amount of the contract, after which time the contractor is to be entitled to receive payment of the full value of all works executed and not included in any former payment, and the architect is to give to the contractor certificates accordingly, and when the works shall be completed, of possession of the building shall be given up to the smallholder, the contractor is to be entitled to receive one moiety of the amount remaining due, according to the best estimate of the same that can then be made, and the architect is to give to the contractor certificates accordingly, and the contractor is to be entitled to receive the balance of all moneys due or payable to him under or by virtue of the contract within months from the completion of the works or from the date of giving up possession thereof to the smallholder whichever shall first happen. The contractor is to be entitled to receive any sum reserved for painting and papering or otherwise, on the completion thereof. Provided always that no final or other certificate is to cover or relieve the contractor from liability under the provisions of Clause No. 11, whether or not same be notified by the architect at the time or subsequently to granting any such certificate.

18. A certificate of the architect, or an award of the referee herein-after referred to, as the case may be, showing the final balance, due or payable to the contractor, is to be conclusive evidence of the works having been duly completed, and that the contractor is entitled to receive payment of the final balance, but without prejudice to the liability of the contractor under the provisions of Clause No, 11.

19. Time shall be considered as the essence of this contract, and in default of the contractor not completing the work to the above specified or any date substituted in lieu thereof as herein provided, he shall pay the smallholder for every week's delay till the completion of the work, as aforesaid, the sum of £

20. Provided always that in case any question, dispute, or difference shall arise between the smallholder, or the architect, on his behalf, and the contractor as to what additions, if any, ought in fairness to be made to the amount of the contract by reason of the works being delayed through no fault of the contractor, or by reason or on account of any directions or requisitions, of the architect involving increased cost to the contractor beyond the cost properly attending the carrying out the contract according to the true intent and meaning of the signed drawings and specification, or as to the works having been duly completed, or as to the construction of these presents, or as to any other matter or thing arising under or out of this contract except as to matters left during the progress of the works to the sole decision or requisition of the architect under Clauses Nos. 2, 9, and 10, or in case the contractor shall be dissatisfied with any certificate of the architect under Clause No. 7 or under the proviso in Clause No. 16, or in case he shall withhold or not give any certificate to which the contractor may be entitled, then such question, dispute, or difference, or such certificate, or the value or matter which should be certified, as the case may be, is to be from time to time referred to the arbitration and final decision of [the county Surveyor], or in the event of his death, or ceasing to act as County Surveyor, then of an architect to be named by the chairman, for the time being of the County Council.

In witness whereof the said parties hereto have hereunto set their respective hands the day and year hereinbefore written.

[This document will require 6d. stamp.]

BOND TO SECURE PERFORMANCE OF CONTRACT FOR WORK ON A SMALL HOLDING.

KNOW ALL MEN by these presents that we [the contractor] of in the county of and [the surety] of in the county of are held and firmly bound to [the small holder] of in the county of in the sum of to be paid to the said [the small holder] or his executors administrators or assigns, for which payment we hereby bind ourselves and every two or more of us jointly and each of us severally, and our and each of our heirs executors and administrators jointly and severally.

Sealed with our seals and dated the day of

WHEREAS by a certain contract, dated the day of , and made between of (hereinafter called "the smallholder") of the one part and the abovenamed of (hereinafter called "the contractor") of the other part, the contractor for and in consideration of the sum of £ or such greater or lesser sum as is therein provided to be paid to the contractor by the smallholder by the instalments and in manner therein mentioned or referred to, agreed to erect build and complete a house with the necessary outbuildings at in the parish of in the county of in the said contract more specifically set out and referred to in pursuance of and in accordance with the terms and conditions contained or referred to in the said contract, and according to the specifications and plans therein mentioned. Now therefore the condition of the abovewritten bond or obligation is such that if the above bounden contractor his heirs executors or administrators should observe and perform all the stipulations and provisions in the said contract mentioned or referred to, and on his or their or either of their part or parts to be observed and performed, and should on or before the day of 19 , execute or cause to be executed, and completely finished, all and singular the several erections, buildings, and other works particularised in the said contract, or in the specifications and plans therein referred to, then the abovewritten bond shall be void, but otherwise shall remain in force, provided always, and it is hereby agreed and declared that no variation in the terms of the said contract, nor extension of time given to the contractor, or his executors, or administrators, beyond the original or enlarged time provided in the said contract for completing the said works and performing any of the stipulations above referred to, nor any other delay or forbearance, nor the taking by the smallholder from the said contractor, or from any other person or persons of further or additional or collateral security for the due performance by the contractor of the said contract, shall in any way release the said [*the surety*] or his heirs executors or administrators from his or their liability under the above written bond, and provided further, that the smallholder shall not be obliged to have recourse to such other security before calling upon the said [*the surety*] under the above written bond.

Signed sealed and delivered by the said
in the presence of }

Signed sealed and delivered by the said
in the presence of }

[*This instrument must be stamped with a 10s. stamp.*]

REGISTER OF SOUTH LITTLETON

Name: JOHN SMITH.

Holding No. 99.
Acreage, 2a. 0r. 0p.

Date of Payment.		Purchase Money.		Total Paid.
		Deposit.	Half-yearly Instalments.	
		£ s. d.	£ s. d.	£ s. d.
1907.				
Jan. 2	By purchase money	38 0 0	..	38 0 0
Oct. 19	„ „ „	..	15 9	15 9

SMALL HOLDERS

SMALL HOLDINGS.

Address: NORTH LITTLETON.

	£	s.	d.
Purchase money . . .	190	0	0
Cash payment . . .	38	0	0

Equal Half-yearly Instalments
of Principal and Interest
combined for Forty Years . 3 16 6

Year.	Date of payment.	Instalment.		Ledger follo.	Deposit.	Half-yearly Instalments.						Total.
		No.	Payable.			Principal.			Interest.			
1907	Jan. 2	1 {	Brought forward }	181	£ s. d. 38 0 0	£ s. d. ..	£ s. d. ..	£ s. d. 38 0 0				
			1907.									
	Oct. 19		Sept. 30	71	..	15 9	3 0 9	3 16 6				
			1908.									
			Mar. 31									
			Sept. 30									
			1909.									
			Mar. 31,									
			etc.									

APPENDIX II.

STATUTES AND RULES.

*The Acts are printed as amended by subsequent enactments, and only
so far as they seem applicable to small holdings.*

LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 Vict. c. 18.)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature. [8th May 1845.]

BE it enacted, etc.

That this Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

2. *Special Act, etc.*—For the meaning of the expressions "*Special Act*," "*prescribed*," and "*promoters*," as originally defined in this section, there must be substituted the meanings given in the *Small Holdings Act, 1907, s. 46 (1), Sched. I., Part I. (7)*.

3. *Interpretations in this and the Special Act.*—The following words and expressions, both in this and the special Act (a), shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Words importing the masculine gender only shall include females :

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure :

The word "lease" shall include an agreement for a lease ;

The word "month" shall mean calendar month :

The expression "superior courts" shall mean Her Majesty's Superior Courts of Record at Westminster (b) :

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :

The word "sheriff" shall include under sheriff, or other legally competent deputy, and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not only in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

The word "Justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together :

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any

person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking :

The expression "the Bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England.

(a) The special Act is the Small Holdings Act, 1907, and the order made under Schedule I. thereof.

(b) Now the High Court of Justice, Royal Courts of Justice, Strand, London.

4. *Short Title of the Act.*—In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

5. *Form in which portions of this Act may be incorporated with other Acts.*—And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substances of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows :

6. *Power to purchase lands by agreement.*—Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking (a) to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

(a) The county council are the promoters.

7. *Parties under disability enabled to sell and convey.*—It shall

be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

8. *Parties under disability to exercise other powers.*—The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

9. *Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.*—The purchase money or compensation to be paid for any lands to be purchased or

taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision herein-after contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner herein-after mentioned.

10. *Where vendor absolutely entitled, lands may be sold on chief rents.*—It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, but except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

(See 23 & 24 Vict. c. 106, s. 1, which was repealed by the Statute Law Revision Act, 1875.)

11. *Payment of rents to be charged on tolls.*—The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

(See 23 & 24 Vict. c. 106, s. 2, post.)

12, 13, 14. [*These sections do not appear to be applicable to the sale of land for small holdings.*]

15. *Municipal corporations not to sell without the approbation of the Treasury.*—Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows :

16, 17. [*These sections are not applicable to small holdings.*]

18. *Notice of intention to take lands.*—When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof ; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

(For Form of Notice to Treat, see p. 117, *ante*.)

19. *Service of notices on owners and occupiers of lands.*—All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and, in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

(See *Small Holdings Act*, 1907, s. 46 (5).)

20. *Service of notice on a corporation aggregate.*—If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

21. *If parties fail to treat or in case of dispute, question to be settled as after mentioned.*—If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

22 to 28. [*As under the Small Holdings Act, 1907, all disputes as to compensation are to be determined by a single arbitrator appointed by the Board these sections become inapplicable.*]

29. *In case of death of single arbitrator the matter to begin de novo.*—If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

30, 31. [*These sections are inapplicable.*]

32. *Power of arbitrator to call for books, etc.*—The said arbitrator may call for the production of any documents in the possession or power of either party which he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

(*See Small Holdings Act, 1907, Sched. I., Part I. (5).*)

33. *Arbitrator to make a declaration.*—Before any arbitrator shall enter into the consideration of any matters referred to him, he shall in the presence of a Justice make and subscribe the following declaration; that is to say,

‘ I A.B. do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act
[*naming the special Act*]. A.B.

‘ Made and subscribed in the presence of .’

And such declaration shall be annexed to the award when made; and if any arbitrator having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

34. *Costs of arbitration how to be borne.*—All the costs of any such arbitration, and incident thereto, to be settled by the arbitrator,

shall be borne by the promoters of the undertaking, unless the arbitrator shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrator shall be borne by the parties in equal proportions.

(*But see Small Holdings Act, 1907, Sched. I., Part 1 (6).)*

35. *Award to be delivered to the promoters of the undertaking.*—The Arbitrator shall deliver his award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

36. *Submission may be made a Rule of Court.*—The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

37. *Award not void through error in form.*—No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

38 to 57. [*These sections are inapplicable. They relate to the assessment of compensation by a Jury.*]

58. *Compensation to absent parties to be determined by a surveyor appointed by two justices.* The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as herein-after mentioned.

59. *Two justices to nominate a surveyor.* Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Kingdom, prevented from treating, or cannot after diligent inquiry be found, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

60. Declaration to be made by the surveyor.—Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

‘ I A.B. do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. A.B.

‘ Made and subscribed in the presence of .’

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

61. Valuation &c. to be produced to the owner of the lands on demand.—The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

62. Expenses to be borne by promoters.—All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

63. Purchase money and compensation, how to be estimated.—In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the arbitrator, or surveyor, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

(See *Small Holdings Act, 1907*, s. 26 (5).)

64. Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.—When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or

was absent from the Kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation herein-before authorised or required to be submitted to arbitration.

(The Arbitration will be by a single arbitrator appointed by the Board.)

65. Question to be submitted to the arbitrator.—The question to be submitted to the arbitrator in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

66. If further sum awarded, promoters to pay or deposit same within 14 days.—If the arbitrator shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

67. Costs of the arbitration.—If the arbitrator shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrator, shall be in the discretion of the arbitrator, but if the arbitrator shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

(But see *Small Holdings Act, 1907, Sched. I. Part I. (6).*)

68. To be settled by arbitration.—If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, such party may have the same settled by arbitration, and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and, unless the promoters of the undertaking be

willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows :

69. Purchase money payable to parties under disability amounting to 200*l.* to be deposited in the bank.—If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant General of the Court of Chancery, to be placed to the account there of such Accountant General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said court ; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes ; (that is to say,)

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes ; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled ; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct ; or

In payment to any party becoming absolutely entitled to such money.

70. Order for application and investment meanwhile.—Such money may be so applied as aforesaid upon an order of the Court of

Chancery made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant General in the purchase of three *per centum* consolidated or three *per centum* reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

71. *Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.*—If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner herein-before directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner herein-before directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

72. *Sums not exceeding 20*l.* to be paid to parties.*—If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity, of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

73. *All sums payable under contract with persons not absolutely entitled, to be paid in to bank.*—All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any

contracting party not entitled as aforesaid to retain to his own use any portion of the sum so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the Bill authorizing the taking of such lands (a); but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy; provided always, that it shall be in the discretion of the Court of Chancery or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

(a) Possibly, the Order for compulsory taking may be regarded as the "Bill."

74. *Court of Chancery may direct application of money in respect of leases or reversions as they may think just.*—Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

75. *Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.*—Upon deposit in the bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the

undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking if they think fit, to execute a deed poll under their common seal containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by an arbitrator, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

76. *Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.*—If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the Kingdom, or cannot after diligent inquiry be found, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant General of the Court of Chancery, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

77. *Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.*—Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such

money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

78. *Application of monies so deposited.*—Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands or any part thereof, and may make such other order in the premises as to such Court shall seem fit.

79. *Party in possession to be deemed the owner.*—If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

80. *Costs in cases of money deposited.*—In all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall

have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants; provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

And with respect to the conveyances of lands, be it enacted as follows:

81. *Form of conveyances.*—Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if

they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

82. Costs of conveyances.—The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

83. Taxation of costs of conveyances.—If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows :

84. Payment of price to be made previous to entry, except to survey, &c.—The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more

than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

85. *Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.*— Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds *per centum per annum*, from the time of entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

86. *Upon deposit being made cashier to give receipt.*—The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be

entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

87. *Deposit to remain as a security, and to be applied under the direction of the Court.*—The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

88. *The company may pay the deposit money into the bank by way of security during the time that the office of the Accountant General is closed.*—If at any time the company be unable, by reason of the closing of the office of the Accountant General of the Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as herein-after provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant General, and upon production of such direction at the Bank of *England* the money so previously paid in shall be placed to the credit of the said Accountant General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the Report Office.

89. *Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.*—If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the Special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bona fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

90. *Decision of justices not conclusive as to the right of the promoters.*—On the trial of any action for any such penalty as aforesaid the decision of the justices under the provisions herein-before contained shall not be held conclusive as to the right of entry on any such land by the promoters of the undertaking.

91. *Proceedings in case of refusal to deliver possession of lands.*—If in any case in which according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such

warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

92. *Parties not to be required to sell part of a house.*—And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory if such party be willing and able to sell and convey the whole thereof.

And with respect to small portions of intersected land, be it enacted as follows :

93. *Owners of intersected lands may insist on sale.*—If any lands not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

94. *Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.*—If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then

the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the arbitrator shall, if required by either party, ascertain by his award the value of any such severed piece of land, and also what would be the expense of making such communication.

And with respect to copyhold lands, be it enacted as follows :

95. *Conveyance of copyhold lands to be enrolled.*—Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

96. *Copyhold lands to be enfranchised.*—Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands, in the promoters of the undertaking or by the enfranchisement of the same, shall be allowed for.

97. Lord of the manor to enfranchise on payment of compensation.—Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised and shall be for ever thereafter held in free and common soccage.

98. Apportionment of copyhold rents.—If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment for such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

And with respect to any such lands, being common or waste lands, be it enacted as follows: [*As to this part of the Act reference should be made to 45 Vict. c. 15*].

99. Compensation for common lands, where held of a manor, &c., how to be paid.—The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable

and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined, and paid and applied in manner hereinafter provided with respect to common lands, the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

100. *Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.*—Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

101. *Compensation for common lands where not held of a manor how to be ascertained.*—The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

102. *A meeting of the parties interested to be convened.*—It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such

lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

103. *Meeting to appoint a committee.*—It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

104. *Committee to agree with the promoters of the undertaking.*—It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

105. *Disputes to be settled as in other cases.*—If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation. (a)

(a) Namely, by a single arbitrator appointed by the Board of Agriculture and Fisheries.

106. *If no committee be appointed the amount to be determined by a surveyor.*—If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found. (a)

(a) See ss. 58 to 65, *ante*.

107. *Upon payment of compensation payable to commoners the lands to vest.*—Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested as it shall think fit.

And with respect to lands subject to mortgage, be it enacted as follows:

108. *Power to redeem mortgages.*—It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give

notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

109. *Deposit of mortgage money on refusal to accept.*—If, in either of the cases aforesaid upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

110. *Sum to be paid when mortgage exceeds the value of the lands.*—If any such mortgaged lands shall be of less value than the principal, interests, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such land, and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will

extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

111. *Deposit of money when refused on tender.*—If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

112. *Sum to be paid where part only of mortgaged lands taken.*—If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid

shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

113. *Deposit of money when refused on tender.*—If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

114. *Compensation to be made in certain cases if mortgage paid off before the stipulated time.*—Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by

such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows :

115. Release of lands from rentcharges.—If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

116. Release of part of lands from charge.—If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

117. Deposit in case of refusal to release.—Upon payment or tender of the compensation so agreed upon or determined to the

party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner herein-before provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

118. *Charge to continue on lands not taken.*—If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

And with respect to lands subject to leases, be it enacted as follows:

119. *Where part only of lands under lease taken, the rent to be apportioned.*—If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may

be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

120. *Tenants to be compensated.*—Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

121. *Compensation to be made to tenants at will, &c.*—If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term of interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; (a) and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act,

(a) In the case of small holdings the amount of compensation will be fixed by a single arbitrator appointed by the Board.

122. *Where greater interest claimed than from year to year lease to be produced.*—If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term

or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

123. *Limit of time for compulsory purchase.*—And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special Act. (a)

(a) In the case of small holdings the limit of time for compulsory taking will be fixed by the Order, or, if no time is so fixed, will be three years from the confirmation of the Order.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows :

124. *Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.*—If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through a mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interests which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such

purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interests may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land or as near thereto as circumstances will admit.

125. *How value of such lands to be estimated.*—In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the arbitrator or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

126. *Promoters of the undertaking to pay the costs of litigation as to such lands.*—In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows (a):

(a) As to the application of this part of the Act, see Small Holdings Act, 1892, ss. 11, 15 (3), and notes thereto.

127. *Lands not wanted to be sold, or in default to vest in owners of adjoining lands.*—Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to

the purposes of the special Act: and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

128. *Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.*—Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, (a) such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

(a) But see Small Holdings Act, 1907, s. 13.

129. *Right of pre-emption to be claimed within six weeks.*—If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

130. *Differences as to price to be settled by arbitration.*—If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

131. *Lands to be conveyed to the purchasers.*—Upon payment or tender to the promoters of the undertaking of the purchase money so

agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

132. Effect of the word "grant" in conveyances.—In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors, from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them ;

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

133. *Land tax and poor's rate to be made good.*—And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

134. *Service of notices upon company.*—And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices, where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

135. *Tender of amends.*—And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows (*the omitted sections or parts of sections in this part were repealed by the Summary Jurisdiction Act, 1884*):

136. *Penalties to be summarily recovered before two justices.*—Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not

otherwise provided for, may be recovered by a summary proceeding before two justices.

138. *Distress how to be levied.*—Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

139. *Application of penalties.*—The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish.

140. *Distress against the treasurer.*—If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

141. *Distress not unlawful for want of form.*—No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

143. *Penalty on witnesses making default.*—It shall be lawful for any justice to summon any person to appear before him as a witness

in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

145. *Proceedings not to be quashed for want of form.*—No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

146. *Parties allowed to appeal to quarter sessions on giving security.*—If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions.

147. *Court to make such order as they think reasonable.*—At the quarter sessions for which notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

148. *Receiver of the Metropolitan Police district to receive penalties incurred within his district.*—Provided always, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables,

149. Persons giving false evidence liable to penalties of perjury.—And be it enacted. That any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

SCHEDULES

SCHEDULE (A).

I of in consideration
of the sum of paid to me [or, as the case
may be,] into the Bank of England in the name and with the
privity of the Accountant General of the Court of Chancery, ex
parte "The Promoters of the Undertaking " [*naming them*], [or to
A.B. of and C.D. of two
trustees appointed to receive the same], pursuant to the [*here name
the special Act*], by the [*here name the company or other promoters
of the undertaking*], incorporated [or constituted] by the said Act,
do hereby convey to the said company [or other description], their
successors and assigns all [*describing the premises to be conveyed*],
together with all ways, rights, and appurtenances thereto belonging,
and all such estate, right, title, and interest in and to the same as
I am or shall become seised or possessed of, or am by the said Act

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empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day
of in the year of our Lord

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I of in consideration of the rentcharge to be paid to me, my heirs and assigns, as herein-after mentioned, by "The Promoters of the Undertaking" [naming them], incorporated [or constituted] by virtue of the [here name the special Act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [or other description], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [or half-yearly, as agreed upon,] portions, henceforth, on the [stating the days], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord

RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 20.)

[See *Small Holdings Act, 1907, Sched. I.*]

And with respect to mines lying under or near the railway, be it enacted as follows :

77. *Company not to be entitled to minerals, unless expressly purchased.*—The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased ; and all such mines, excepting as

aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

78. *Mines lying near the railway not to be worked if the company are willing to make compensation for them.*—If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance or where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do, thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

79. *If company are not willing to make compensation, owner may work the mines.*—If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

80. *Mining communications between mines lying on both sides of railway.*—If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall

be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

81. *Company to make compensation for injury done to mines.*

—The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration.

82. *And also to owner, &c., of surface for damage caused by any airway or other work made necessary by the railway.*—If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines,) by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

83. *Power to company to enter and inspect the working of mines.*—For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such

mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

84. *Penalty for refusal to allow inspection.*—If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

85. *If mines improperly worked, the company may require means to be adopted for the safety of the railway.*—If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier, by action in any of the superior courts.

LANDS CLAUSES ACT, 1860.

(23 & 24 VICT. c. 106.)

An Act to amend the Lands Clauses Consolidation Act, 1845.

[20th August, 1860.]

2. *Powers in 8 & 9 Vict. c. 18, ss. 10, 11, to sell lands for a rent-charge, and to recover rentcharge extended to all sales, &c., where parties are under disability.*—The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

4. *Amount of rentcharge to be settled in manner directed in 8 & 9 Vict. c. 18, s. 9.*—In every case of such sale or compensation

by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of the said Act: provided that the amount of such annual rentcharge shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands shall in all such cases be added to and shall form a part of the said rentcharge; and that no fine, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge made payable for such lands: provided also that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

5. *If lands are purchased by way of rentcharge, the borrowing powers of the promoters shall be reduced proportionally.*—In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge so for the time being payable.

8. *This Act and 8 & 9 Vict. c. 18 to be construed together.*—This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, in all matters in which it relates to the said Act; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. c. 55.)

BORROWING POWERS.

233. *Power to borrow on credit of rates.*—Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund, rate, or rates.

234. *Regulations as to exercise of borrowing powers.*—The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely,)

- (1) Money shall not be borrowed except for permanent works (including under this expression any works of which the costs ought in the opinion of the Local Government Board to be spread over a term of years):
- (2) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:
- (3) Where the sum proposed to be borrowed with such balance (if any) would exceed the assessable value for one year of

such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said board :

- (4) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case ; and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned :
- (5) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established : Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied :
- (6) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of the rate levied in such part of the district as aforesaid.

235. *Power to borrow on credit of sewage land and plant.*—

Where any local authority are possessed of any land, works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands, works or other property, and may mortgage such lands, works or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands, works or other property so mortgaged. The moneys so

borrowed shall be applied for purposes for which moneys may be borrowed under this Act; but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three fourths of the purchase money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section.

236. *Form of mortgage.*—Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

237. *Register of mortgages.*—There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

238. *Power of Board to direct inquiries.*—The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

239. *Orders as to costs of inquiries.*—The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the

superior Courts of law on the application of any person named therein.

295. Orders of Board under this Act.—All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

296. Power of inspectors of Local Government Board.—Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

SCHEDULE IV.

FORM H.

Form of Mortgage of Rates.

By virtue of the Public Health Act, 1875, we the
being the local authority under that Act for the district of
in consideration of the sum of paid to the treasurer of the
said district by A.B. of for the purpose of the said Act, do
grant and assign, unto the said A.B. his executors, administrators,
and assigns, such proportion of the rates arising or accruing by
virtue of the said Act from [*the rates mortgaged*] as the said sum of
doth or shall bear to the whole sum which is or shall be
borrowed on the credit of the said rates, to hold to the said A.B. his
executors, administrators, and assigns, from the day of the date hereof
until the said sum of with interest at the rate of
per centum per annum for the same shall be fully paid and
satisfied: And it is hereby declared that the said principal sum shall
be repaid on the day of at [*place of payment*]. Dated
this day of one thousand nine hundred and .

[*To be sealed with the common seal of the local authority.*]

LAND TITLES AND TRANSFER ACT, 1875.

(38 & 39 VICT. c. 87.)

An Act to simplify titles and facilitate the transfer of land in England. [18th August, 1875.]

BE IT ENACTED, ETC.

PRELIMINARY.

1. *Short title.*—This Act may be cited as the Land Transfer Act, 1875.

2. *Application of Act.*—This Act shall not apply to Scotland or Ireland, and land shall not be registered under this Act unless it is of freehold tenure or is leasehold held under a lease which is either immediately or mediately derived out of land of freehold tenure; but for the purposes of this Act customary freehold, in any case in which an admission or any Act by the lord of the manor is necessary to perfect the title of a purchase from the customary tenant, shall not be deemed to be land of freehold tenure. (*See Schedule I. to Land Transfer Act, 1897.*)

3. *Commencement of Act.*—This Act shall come into operation on the first day of January 1876, which day is in this Act referred to as the commencement of this Act.

4. *Construction of terms in Act.*—In this Act, unless there is something inconsistent in the context,—

“Person” includes a corporation and any body of persons unincorporate:

“Registrar,” “court,” and “general rules,” mean such “registrar,” “court,” and “general rules,” as are in this Act respectively in that behalf mentioned:

“Prescribed” means prescribed by any general rules made in pursuance of this Act:

“The Court of Chancery,” and “Court of Appeal in Chancery,” and “Her Majesty’s Superior Courts,” include any courts in which the powers of the courts so referred to by name, may be for the time being vested:

“The Land Registry Act, 1862,” means the Act passed in the session held in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter fifty-three, intituled “An Act to facilitate the proof of title to and the conveyance of real estates.”

The definition of land contained in the Act of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter twenty-one, intituled “An Act for shortening the language used in Acts of Parliament,” shall not apply to this Act.

PART I.

ENTRY OF LAND ON REGISTER OF TITLE.

(1) *Freehold Lands.*

5. *Application for registration with an absolute title or with a possessory title only.*—A land registry shall be established, and on and after the commencement of this Act the following persons; (that is to say,)

- (1) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether subject or not to incumbrances; and
- (2) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether subject or not to incumbrances; and
- (3) Any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether subject or not to incumbrances,

may apply to the registrar under this Act to be registered, or to have registered in his stead any nominee or nominees not exceeding the prescribed number, as proprietors or proprietor of such freehold land with an absolute title or with a possessory title only: Provided, that in the case of land contracted to be bought, the vendor consents to the application.

6. *Evidence of title required on application.*—Where an absolute title is required the applicant or his nominee shall not be registered as proprietor of the fee simple until and unless the title is approved by the registrar.

Where a possessory title only is required the applicant or his nominee may be registered as proprietor of the fee simple on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed.

7. *Estate of first registered proprietor with absolute title.*—The first registration of any person as proprietor of freehold land (in this Act referred to as first registered proprietor,) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows :

- (1) To the incumbrances, if any, entered on the register; and
- (2) Unless, under the provisions of this Act, the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances; and
- (3) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons

claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled, but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors.

8. *Estate of first registered proprietor with possessory title.*—The registration of any person as first registered proprietor of freehold land with a possessory title only shall not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor; but, save as aforesaid, shall have the same effect as registration of a person with an absolute title.

9. *A qualified title may be registered in certain cases.*—Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date, or arising under a specified instrument or otherwise particularly described in the register, and a title registered subject to such excepted estate, right, or interest shall be called a qualified title, and the registration of a person as first registered proprietor of land with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted.

10. *Land certificate given on registration.*—On the entry of the name of the first registered proprietor of freehold land on the register, the registrar shall, if required by such proprietor, deliver to him a certificate, in this Act called a land certificate, in the prescribed form; the certificate shall state whether the title of the proprietor therein mentioned is absolute, qualified, or possessory.

(2) *Leasehold Land.*

11. *Application for registration with or without a declaration of title of lessor to grant lease.*—A separate register shall be kept of leasehold land, and on and after the commencement of this Act any of the following persons; that is to say,

- (1) Any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired, whether subject or not to incumbrances; and

- (2) Any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease as is described in this section, whether subject or not to incumbrances; and
- (8) Any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease as is described in the section, whether subject or not to incumbrances,

may apply to the registrar to be registered, or to have registered in his stead any nominee or nominees not exceeding the prescribed number, as proprietor or proprietors of such leasehold land, with the addition where the lease under which the land is held is derived immediately out of freehold land, and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held :

Provided,—

That in the case of leasehold land contracted to be bought, the vendor consents to the application.

Every applicant for registration of leasehold land shall deposit with the registrar the lease of the land in respect of which the application is made, or if such lease is proved to the satisfaction of the registrar to be lost a copy of such lease or of a counterpart thereof, verified to the satisfaction of the registrar; and such lease or attested copy is in this Act referred to as the registered lease.

Leasehold land held under a lease containing an absolute prohibition against alienation, shall not be registered in pursuance of this Act; and leasehold land held under a lease containing a prohibition against alienation without the licence of some other person, shall not be registered under this Act until and unless provision is made in the prescribed manner for preventing alienation without such licence by entry on the register of a restriction to that effect, or otherwise. (See Land Transfer Act, 1897, Sched. I.)

12. *Evidence of title required on application.*—An applicant or his nominee shall not be registered as proprietor of leasehold land, until and unless the title to such land is approved by the registrar; and further, if he apply to be registered as proprietor of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, until and unless the lessor, after an examination of his title by the registrar is declared to have had an absolute or qualified title to grant the lease under which the land is held.

13. *Estate of first registered proprietor of leasehold land with a declaration of absolute title of lessor to grant lease.*—The registration under this Act of any person as first registered proprietor of leasehold land with a declaration that the lessor had an absolute title to grant

the lease under which the land is held shall be deemed to vest in such person the possession of the land comprised in the registered lease relating to such land for all the leasehold estate therein described, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows:

- (1) To all implied and express covenants, obligations, and liabilities incident to such leasehold estate; and
- (2) To the incumbrances (if any) entered on the register; and
- (3) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land; and
- (4) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled,

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors.

14. *Estate of first registered proprietor of leasehold land without a declaration of title of lessor to grant lease.*—The registration of any person under this Act as first registered proprietor of leasehold land without a declaration of the title of the lessor shall not affect or prejudice the enforcement of any estate, right, or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall have the same effect as the registration of any person under this Act as first registered proprietor of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held.

15. *Lessor may be declared to have a qualified title to grant lease in certain cases.*—Where an absolute title is required, and on the examination of the title of any lessor by the registrar it appears to him that the title of such lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the registrar may, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register; and a title of a lessor registered subject to such excepted estate, right, or interest is in this Act referred to as a qualified title; and the registration of a person as first registered proprietor of leasehold land with a declaration that the lessor had a qualified title to grant the lease under which the land is held shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save

that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.

16. *Office lease given on registration.*—On the entry of the name of the first registered proprietor of leasehold land on the register, the registrar shall, if required by the proprietor, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon a statement whether any declaration, absolute or qualified, as to the title of the lessor has been made, and any other particulars relating to such lease entered in the register.

FREEHOLD AND LEASEHOLD LAND.

17. *Regulations as to examination of title by registrar.*—The examination by the registrar of any title under this Act shall be conducted in the prescribed manner, provided that—

- (1) Due notice shall be given, where the giving of such notice is prescribed, and sufficient opportunity be afforded to any persons desirous of objecting to come in and state their objections to the registrar; and
- (2) The registrar shall have jurisdiction to hear and determine any such objections, subject to an appeal to the Court in the prescribed manner and on the prescribed conditions; and
- (3) If the registrar, upon the examination of any title, is of opinion that the title is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of such title, or may require the applicant to apply to the court, upon a statement signed by the registrar, for its sanction to the registration; and
- (4) The registrar may accept as evidence recitals, statements, and descriptions of facts, matters, and parties in deeds, instruments, or statutory declarations not less than twenty years old.

18. *Liability of registered land to easements and certain other rights.*—All registered land shall, unless, under the provisions of this Act, the contrary is expressed on the register, be deemed to be subject to such of the following liabilities, rights, and interests as may be for the time being subsisting in reference thereto, and such liabilities, rights, and interests shall not be deemed incumbrances within the meaning of this Act; (that is to say.)

- (1) Liability to repair highways by reason of tenure, quitrents, crown rents, heriots, and other rents and charges having their origin in tenure; and

- (2) Succession duty, land tax, tithe rentcharge, and payments in lieu of tithes, or of tithe rentcharge; and
- (3) Rights of common, rights of sheepwalk, rights of way, water-courses, and rights of water, and other easements; and
- (4) Rights to mines and minerals; and
- (5) Rights of entry, search, and user, and other rights and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals, or of property in mines or minerals; and
- (6) Rights of fishing and sporting, seignorial and manorial rights of all descriptions, and franchises, exerciseable over the registered lands; and
- (7) Leases or agreements for leases and other tenancies for any term not exceeding twenty-one years, or for any less estate, in cases where there is an occupation under such tenancies :

Provided as follows :

- (a) Where it is proved to the satisfaction of the registrar that any land registered or about to be registered is exempt from land tax or tithe rentcharge, or from payments in lieu of tithes, or of tithe rentcharge, the registrar may notify the fact on the register in the prescribed manner; and
- (b) The Commissioners of Inland Revenue shall, upon the application of the proprietor of any land registered or about to be registered upon such declaration being made, or such other evidence being produced as the commissioners require, and upon payment of the prescribed fee, grant a certificate that at the date of the grant thereof no succession duty is owing in respect of such land, and the registrar shall in the prescribed manner notify such fact on the register, and such notification shall be conclusive evidence of the fact so notified in respect of succession duty; and
- (c) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is vested in the proprietor of land registered or about to be registered, the registrar may register such proprietor in the prescribed manner as proprietor of such mines and minerals as well as of the land; and
- (d) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is severed from any land registered or about to be registered, the registrar may on the application of the person entitled to any such mines and minerals register him as proprietor of such mines and minerals in manner hereafter in this Act mentioned, and upon such registration being effected

shall enter on the register of the land a reference to the registration of such other person as proprietor of such mines and minerals.

Where the existence of any such liabilities, rights, or interests, as are mentioned in this section, is proved to the satisfaction of the registrar, the registrar, may if he think fit, enter on the register notice of such liabilities, rights, or interests in the prescribed manner. (*See Land Transfer Act, 1897, Sched. I.*)

19. Discharge of incumbrance.—Where upon the first registration of any freehold or leasehold land, notice of an incumbrance affecting such land has been entered on the register, the registrar shall, on proof to his satisfaction of the discharge of such incumbrance, notify in the prescribed manner on the register by cancelling the original entry or otherwise the cessation of such incumbrance. (*See Land Transfer Act, 1897, Sched. I.*)

20. Determination of lease.—The registrar shall, on proof to his satisfaction of the determination of any lease of registered leasehold land notify in the prescribed manner on the register the determination of such lease.

21. (*Repealed by Land Transfer Act, 1897.*)

PART II.

REGISTERED DEALINGS WITH REGISTERED LAND.

Mortgage of Registered Land.

22. Creation of charges, and delivery of certificate of charge.—Every registered proprietor of any freehold or leasehold land may in the prescribed manner charge such land with the payment at an appointed time of any principal sum of money either with or without interest, and with or without a power of sale to be exercised at or after a time appointed. The charge shall be completed by the registrar entering on the register the person in whose favour the charge is made as the proprietor of such charge, and the particulars of the charge, and of the power of sale, if any; the registrar shall also, if required, deliver to the proprietor of the charge a certificate of charge in a prescribed form. (*See Land Transfer Act, 1897, Sched. I.*)

23. Implied covenant to pay charges.—Where a registered charge is created on any land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of

the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge to pay the principal sum charged, and interest, if any, thereon, at the appointed time and rate; also a covenant, if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

24. *Implied covenant in case of leaseholds to pay rent, &c., and indemnify proprietor of charge.*—Where a registered charge is created on any leasehold land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge, that the person being registered proprietor of such land at the time of the creation of the charge, his executors, administrators, and assigns, will pay, perform, and observe the rent, covenants, and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed, and observed, and will keep the proprietor of the charge, his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rent, or any part thereof, or the breach of the said covenants or conditions, or any of them.

25. *Entry by proprietor of charge.*—Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may, for the purpose of obtaining satisfaction of any moneys due to him under the charge, at any time during the continuance of his charge, enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior incumbrancers, and to the liability attached to a mortgagee in possession.

26. *Foreclosure by proprietor of charge.*—Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may enforce a foreclosure or sale of the land charged, in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a proviso for redemption on payment of the money named at the appointed time.

27. *Remedy of proprietor of charge with a power of sale.*—Subject to any entry to the contrary on the register, the registered proprietor of a registered charge with a power of sale may, at any time after the expiration of the appointed time, sell and transfer

the land on which he has a registered charge, or any part thereof, in the same manner as if he were the registered proprietor of such land.

28. *Priority and discharge of registered charges.*—Subject to any entry to the contrary on the register, registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created.

The registrar shall, on the requisition of the registered proprietor of any charge, or on due proof of the satisfaction thereof, notify on the register in the prescribed manner by cancelling the original entry or otherwise the cessation of the charge, and thereupon the charge shall be deemed to have ceased. (*See Land Transfer Act, 1897, Sched. I.*)

Transfer of Freehold Land.

29. *Transfer of freehold land, and delivery of land certificate.*—Every registered proprietor of freehold land may, in the prescribed manner, transfer such land or any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Upon completion of the registration of the transferee the registrar shall, if required, deliver to him a land certificate in the prescribed form; he shall also, in cases where part only of the land is transferred, if required, deliver to the transferor a land certificate, containing a description of the land retained by him.

30. *Estate of transferee for valuable consideration of freehold land with absolute title.*—A transfer for valuable consideration of freehold land registered with an absolute title shall, when registered, confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:

- (1) To the incumbrances, if any, entered on the register; and
- (2) Unless the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances,

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors.

31. *Estate of transferee for valuable consideration of freehold land with qualified title.*—A transfer for valuable consideration of freehold land registered with a qualified title shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer

shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.

32. *Estate of transferee for valuable consideration of freehold land with possessory title.*—A transfer for valuable consideration of freehold land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but save as aforesaid, shall when registered have the same effect as a transfer for valuable consideration of the same land registered with an absolute title.

33. *Estate of voluntary transferee of freehold land.*—A transfer of freehold land made without valuable consideration shall, so far as the transferee is concerned, be subject to any unregistered estates, rights, interests, or equities subject to which the transferor held the same, but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, have the same effect as a transfer of the same land for valuable consideration. (*See Land Transfer Act, 1897, Schedule I.*)

Transfer of Leasehold Land.

34. *Transfer of leasehold land, and delivery of office lease.* Every registered proprietor of leasehold land may, in the prescribed manner, transfer the whole of his estate in such land or in any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease; but if a part only is transferred, the registrar shall, if required, according to any agreement that may have been entered into between the transferor and transferee, deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing by endorsement or otherwise the parcels of which the person to whom such copy is delivered is the registered proprietor.

35. *Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor.*—A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held shall, when registered, be deemed to vest in the transferee the possession of the land transferred for all the leasehold

estate described in the registered lease relating to such land, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows :

- (1) To all implied and express covenants, obligations, and liabilities incident to such estate ; and
- (2) To the incumbrances (if any) entered on the register ; and
- (3) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land ;

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors.

36. *Estate of transferee for valuable consideration of leasehold land with a declaration of qualified absolute title of lessor.*—A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration.

37. *Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor.*—A transfer for valuable consideration of leasehold land registered without a declaration of the title of the lessor shall not affect the enforcement of any estate, right, or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held ; but, save as aforesaid, shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held.

38. *Estate of voluntary transfer of leasehold land.*—A transfer of leasehold land made without valuable consideration shall, so far as the transferee is concerned, be subject to any unregistered estates, rights, interests, or equities subject to which the transferor held the same ; but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, have the same effect as a transfer of the same land for valuable consideration. (*See Land Transfer Act, 1897, Sched. I.*)

39. *Implied covenants on transfer of leasehold estates.*—On the transfer of any leasehold land under this Act, unless there be an

entry on the register negating such implication, there shall be implied as follows; (that is to say,)

- (1) On the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted, or knowingly suffered, the rent, covenants, and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed, and observed, have been so paid, performed, and observed up to the date of the transfer; and
- (2) On the part of the transferee a covenant with the transferor, that he, the transferee, his executors, administrators, or assigns, will pay, perform, and observe the rent, covenants, and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed, and observed, and will keep the transferor, his heirs, executors, and administrators, indemnified against all actions, suits expenses, and claims on account of the nonpayment of the said rent or any part thereof, or the breach of the said covenants or conditions, or any of them.

Transfer of Charges.

40. *Transfer of charges on register.*—The registered proprietor of any charge may, in the prescribed manner, transfer such charge to another person as proprietor. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the charge transferred; the registrar shall also, if required, deliver to the transferee a fresh certificate of charge, but the transferor shall be deemed to remain proprietor of such charge until the name of the transferee is entered on the register in respect thereof. (*See Land Transfer Act, 1897, Sched. I.*)

41 to 48. [These sections deal with the transmission of registered land on death, bankruptcy, or marriage.] (a)

(a) For s. 41 see p. 41, *ante*.

Power of Registered Proprietor to Impose Restrictions.

49 to 57. [These sections relate to unregistered dealings with registered land.]

58. *Power to place restrictions on register.*—Where the registered proprietor of any land is desirous to place restrictions on transferring or charging such land, such proprietor may apply to the registrar to make an entry in the register that no transfer shall be made of or

charge created on such land, unless the following things, or such of them as the proprietor may determine, are done; (that is to say,)

Unless notice of any application for a transfer or for the creation of a charge is transmitted by post to such address as he may specify to the registrar :

Unless the consent of some person or persons, to be named by such proprietor, is given to the transfer or the creation of a charge :

Unless some such other matter or thing is done as may be required by the applicant and approved by the registrar. (*See Lands Transfer Act, 1897, Sched. I.*)

59. Registrar to enter restrictions in register.—The registrar shall thereupon, if satisfied of the right of the applicant to give such directions, make a note of such directions on the register, and no transfer shall be made or charge created except in conformity with such directions; but it shall not be the duty of the registrar to enter any of the above directions, except upon such terms as to payment of fees and otherwise as may be prescribed, or to enter any restriction that the registrar may deem unreasonable, or calculated to cause inconvenience; and any such directions may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the registry to be interested in such directions, and shall also be subject to be set aside by the order of the court.

60 to 66. [These sections relate to Cautions against registration, Crown lands, etc.]

As to Proceedings on and before Registration.

67. Registration of lands of different tenures.—If it appears to the registrar that any land, application for registration whereof is made to him, comprises land of freehold tenure and also land of a tenure other than freehold intermixed and undistinguishable, he may, notwithstanding anything in this Act, register the land, but he shall enter notice on the register in such manner as he thinks fit of the facts relating to the tenure of the land, and the tenure of the portion of the land other than freehold shall remain unaffected by the registration.

68. Trustees may sell by medium of registry.—Any person holding land on trust for sale, and any trustee, mortgagee, or other person having a power of selling land, may authorise the purchaser to make an application to be registered as first proprietor with any title which a proprietor is authorised to be registered with under this Act, and may consent to the performance of the contract being conditional on his being so registered, or may himself apply to be registered as such proprietor with the consent of the persons (if any)

whose consent is required to the exercise by the applicant of his trust or power of sale; and the amount of all costs, charges, and expenses properly incurred by such person in or about such application shall in all cases be ascertained and declared by the registrar, and shall be deemed to be costs, charges, and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and such person may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in equity in respect thereof.

70. Instruments and facts affecting the title to be disclosed on registrations.—Before the completion of the registration of any land in respect of which an examination of title is required, the vendor and his solicitor, in cases where the applicant is a person who has contracted to buy such land, and in all other cases the applicant for registration and his solicitor, shall each, if required by the registrar, make an affidavit or declaration that to the best of his knowledge and belief all deeds, wills, and instruments of title, and all charges and incumbrances affecting the title to the land which is the subject of the application, and all facts material to such title, have been disclosed in the course of the investigation of title made by the registrar. The registrar may require any person making an affidavit or declaration in pursuance of this section to state in his affidavit or declaration what means he has had of becoming acquainted with the several matters referred to in this section; and if the registrar is of opinion that any further or other evidence is necessary or desirable, he may refuse to complete the registration until such further or other evidence is produced.

71. Production of deeds.—When an application has been made to the registrar for the registration of any land, if any person has in his possession or custody any deeds, instruments, or evidences of title relating to or affecting such land, to the production of which the applicant, or any trustee for him, is entitled, the registrar may require such person to show cause, within a time limited, why he should not produce such deeds, instruments, or evidences of title to the registrar, or otherwise, as the registrar may deem fit; and, unless cause is shown to the satisfaction of the registrar within the time limited, such deeds, instruments, and evidences of title may be ordered by the registrar to be produced at the expense of the applicant, at such time and place, and in such manner, and on such terms as the registrar thinks fit.

Any person aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the court, which may annul or confirm the order of the registrar with or without modification.

If any person disobeys any order of the registrar made in pursu-

ance of this section, the registrar may certify such disobedience to the court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the court in the same manner in all respects as if the order made by the registrar were the order of the court.

72. Deeds to be marked with notice of registration.—A person shall not be registered as proprietor of land until, if required by the registrar, he has produced to him such documents of title as will in the opinion of the registrar, when stamped or otherwise marked, give notice to any purchaser or other person dealing with such land of the fact of the registration, and the registrar shall stamp or otherwise mark the same accordingly, or until he has otherwise satisfied the registrar that the fact of such registration cannot be concealed from a purchaser or other person dealing with the land. (*See Land Transfer Act, 1897, Sched. I.*)

73. Costs of application for registry.—All costs, charges, and expenses that are incurred by any parties in or about any proceedings for registration of land shall, unless the parties otherwise agree, be taxed by the taxing officer of the Court of Chancery as between solicitor and client, but the persons by whom and the proportions in which such costs, charges, and expenses are to be paid shall be in the discretion of the registrar, and shall be determined according to orders of the registrar, regard being had to the following provision: namely, that any applicant under this Act is liable *prima facie* to pay all costs, charges, and expenses incurred by or in consequence of his application, except in a case where parties object whose rights are sufficiently secured without their appearance, or where any costs, charges, or expenses are incurred unnecessarily or improperly, and subject to this proviso, that any party aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the court, which may annul or confirm the order of the registrar, with or without modification.

If any person disobeys any order of the registrar made in pursuance of this section, the registrar may certify such disobedience to the court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the court in the same manner in all respects as if the order made by the registrar were the order of the court.

Doubtful Questions arising on Title.

74. Registrar may state case for court of law or direct issue.—Whenever, upon the examination of the title to any land, the registrar entertains a doubt as to any matter of law or fact arising upon such title he may, upon the application of any party interested in such

land, refer a case for the opinion of any of Her Majesty's superior courts, with power for the court to direct an issue to be tried before any jury for the purpose of determining any fact; the registrar may also name the parties to such case, and the manner in which the proceedings in relation thereto are to be brought before the court to which such case is referred.

75. *Opinion of Court or decision of jury, how far conclusive.*—The opinion of any court to whom any case is referred by the registrar shall be conclusive on all the parties to such case, unless the court before whom such case is heard permits an appeal to be had.

76. *Intervention of Court in case of incapacitated persons.*—Where any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or persons yet unborn, are interested in the land in respect of the title to which any question arises as aforesaid, any other persons interested in such land may apply to "the court," as defined by this Act, for a direction that the opinion of the court to whom the case is referred under this Act shall be conclusively binding on such infants, married women, idiots, lunatics, persons of unsound mind, persons beyond the seas, or unborn persons.

77. *Power of Court to bind interests of incapacitated persons.*—The court as defined by this Act shall hear the allegations of all parties appearing before it. It may disapprove altogether or may approve, either with or without modification, of the directions of the registrar in respect to any case referred as to the title of land; it may also, if necessary, appoint a guardian or other person to appear on behalf of any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or unborn persons; and if such court is satisfied that the interests of the persons labouring under disability, absent, or unborn, will be sufficiently represented in any case, it shall make an order declaring that all persons, with the exceptions (if any) named in the order, are to be conclusively bound, and thereupon all persons with such exceptions (if any) as aforesaid, shall be conclusively bound by any decision of the court having cognisance of the case in which such persons are concerned.

As to Land Certificates, Office Copies of Leases, and Certificates of Charge.

79. *Renewal of land certificate, or certificate of charge, or office copy of lease.*—The registrar may, upon the delivery up to him of a land certificate or of an office copy of a registered lease or of a certificate of charge, grant a new land certificate or office copy of a lease or certificate of charge in the place of the one delivered up.

80. Land certificate, certificate of charge, and office copy of lease to be evidence.—Any land certificate or certificate of charge shall be *prima facie* evidence of the several matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease.

General Provisions.

83. Enactments as to registration.—The following enactments shall be made with respect to registration of title. (*See Land Transfer Act, 1897, Sched. I.*)

- (7) Previously to registering any proposed purchaser as first proprietor of any land or to registering any disposition of land, it shall be the duty of the registrar to ascertain that all such stamp duties have been satisfied as would be payable if the land had been conveyed by an unregistered disposition to such proposed purchaser, or the disposition to be registered had been an unregistered disposition :
- (8) The provisions of this Act with respect to the liability of registered land to succession duty and to the grant of a certificate by the Commissioners of Inland Revenue in respect of the exemption from succession duty, and to the notification of such exemption on the register, and to the effect of such notification, shall apply with the necessary variations to a registered charge under this Act.

(Subsections 2, 5 and 6 were repealed by s. 14 of the Land Transfer Act, 1897.)

84. Annexation of conditions to registered land.—Where any land is about to be registered, or any registered land is about to be transferred to a purchaser for valuable consideration, there may be registered as annexed thereto, subject to general rules and in the prescribed manner, a condition that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition running with or capable of being legally annexed to land, and the first proprietor and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition; nevertheless, any such condition may be modified or discharged by order of the court, on proof to the satisfaction of the court that such modification will be beneficial to the persons principally interested in the enforcement of such condition. (*See Land Transfer Act, 1897, Sched. I.*)

85. Registered lands to be within the Trustee Act, 1850.—All the provisions of the Trustee Act, 1850, and of any Act amending the same, shall apply to land and charges registered under this Act, but this enactment shall not prejudice the applicability to such land and

charges of any provisions of such Acts relating to land or choses in action.

88. Indemnity of registrar.—The registrar shall not, nor shall the assistant registrar nor any person acting under his authority, or under any order or general rule made in pursuance of this Act, be liable to any action, suit, or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act, or any order or general rule made in pursuance of this Act.

As to Notices.

89. Address of persons on register.—Every person whose name is entered on the register as proprietor of land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish to the registrar a place of address in the United Kingdom.

90. Service of notices.—Every notice by this Act required to be given to any person shall be served personally, or sent through the post in a registered letter marked outside "Office of Land Registry," and directed to such person at the address furnished to the registrar, and unless returned, shall be deemed to have been received by the person addressed within such period, not less than seven days, exclusive of the day of posting, as may be prescribed.

92. Purchasers not affected by omission to send notices.—A purchaser for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof.

Inspection of Register.

104. Inspection of documents.—Subject to such regulations and exceptions and to the payment of such sums as may be fixed by general rules, any person registered as proprietor of any land or charge, and any person authorised by any such proprietor, or by an order of the court, or by general rule, but no other person, may inspect and make copies of and extracts from any register or document in the custody of the registrar relating to such land or charge.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

(46 & 47 VICT. c. 61.)

An Act for amending the law relating to agricultural holdings in
England. [25th August, 1883.]

BE IT ENACTED, etc.

PART I.

IMPROVEMENTS.

As to Improvements executed after the commencement of Act.

3. *Consent of landlord as to improvement in First Schedule, Part I.*—Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the First Schedule [to the *Agricultural Holdings Act, 1900,*] and executed after the commencement of this Act, unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

4. *Notice to landlord as to improvement in First Schedule, Part II.*—Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part of the First Schedule [to the *Agricultural Holdings Act, 1900,*] and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his agent duly authorised in that behalf, notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant

with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

5. *Reservation as to existing and future contracts of tenancy.*—Where in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement mentioned in the third part of the First Schedule [*to the Agricultural Holdings Act, 1900,*] and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a contract of tenancy current at the commencement of this Act in respect of an improvement mentioned in the third part of the said First Schedule, specific compensation for which is not provided by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875.

6 to 16. [*These sections are repealed by the Agricultural Holdings Act, 1900.*]

17. *Award in respect of compensation under ss. 3, 4, and 5.*—In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement, if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for.

18 to 23. [*These sections are repealed by the Agricultural Holdings Act, 1900.*]

24. Recovery of compensation.—Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable, upon order made by the judge of the county court, as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

27. Costs in county court.—The costs of proceedings in the county court under this Act shall be in the discretion of the court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the court.

28. Service of notice, &c.—Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served.

29 to 32. *Relate to the charging of tenants' compensation on the holding.*

33. *Relates to the notice to quit.*

Fixtures.

34. Tenant's property in fixtures, machinery, &c.—Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Provided as follows:—

- (1) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding :
- (2) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding :

- (3) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal :
- (4) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it :
- (5) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal). (a)

(a) And see Small Holdings Act, 1892, s. 4 (2), and Agricultural Holdings Act, 1900, s. 4.

35 to 40. *Extend the application of the Act to Crown, Duchy, ecclesiastical and charity lands.*

Resumption for Improvements, and Miscellaneous.

41. Resumption of possession for cottages, &c.—Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes :

The erection of farm labourers' cottages or other houses, with or without gardens ;

The providing of gardens for existing farm labourers' cottages or other houses ;

The allotment for labourers of land for gardens or other purposes ;

The planting of trees ;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith ;

The obtaining of brick earth, gravel, or sand ;

The making of a watercourse or reservoir ;

The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith ;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensa-

tion shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly. (a)

(a) See Small Holdings Act, 1907, s. 38.

44 to 52. *These sections relate to Distress.*

PART III.

General Provisions.

54. *Holdings to which Act applies.*—Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

55. *Avoidance of agreement inconsistent with Act.*—Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the First Schedule to the *Agricultural Holdings Act, 1900* (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity.

56. *Right of tenant in respect of improvement purchased from outgoing tenant.*—Where an incoming tenant has paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner. if at all, as

the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

58. Provision as to change of tenancy.—A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

59. Restriction in respect of improvements by tenant about to quit.—Subject as in this section mentioned, a tenant shall not be entitled to compensation in respect of any improvements, other than manures as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

A final notice to quit means a notice to quit which has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

- (1) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, has quitted his holding at the expiration of that year; and
- (2) Where a tenant, whether a tenant from year to year, or a lessee, previously to beginning any such improvement, has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

61. Interpretation.—In this Act—

“Contract of tenancy” means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year :

“Determination of tenancy” means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause :

“Landlord” in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding: (a)

“Tenant” means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year :

(a) And see Small Holdings Act, 1907, s. 46 (1) (2).

"Tenant" includes the executors, administrators, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant; and any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid:

"Holding" means any parcel of land held by a tenant: (a)

"County court," in relation to a holding, means the county court within the district whereof the holding or the larger part thereof is situate:

"Person" includes a body of persons and a corporation aggregate or sole:

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

(a) And see Small Holdings Act, 1907, s. 46 (1)(2).

63. *Short title of Act.*—This Act may be cited for all purposes as the Agricultural Holdings (England) Act, 1883.

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 VICT. c. 41.)

BORROWING BY COUNTY COUNCIL.

69.—(1) The county council may from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say:

- (a) for consolidating the debts of the county; and
- (b) for purchasing any land or building any building, which the council are authorised by any Act to purchase or build; and
- (c) for any permanent work or other thing which the county council are authorised to execute or do, and the cost of which ought in the opinion of the Local Government Board to be spread over a term of years; and
- (d) for making advances (which they are hereby authorised to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonisation of

inhabitants of the county, with a guarantee for repayment of such advances from any local authority in the county, or the Government of any colony; and

- (e) for any purpose for which quarter sessions or the county council are authorised by any Act to borrow,

but neither the transfer of powers by this Act nor anything else in this Act shall confer on the county council any power to borrow without the consent above mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by the Acts relating to such borrowing, and the Local Government Board, before giving their consent, shall take into consideration any representation made by any ratepayer or owner of property rated to the county fund.

(2) Provided that where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed will exceed, the amount of one tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.

(3) A county council may also from time to time, without any consent of the Local Government Board, during the period which was fixed for the discharge of any loan raised by them under this Act or transferred to them by this Act, borrow on the like security such amount as may be required for the purpose of paying off the whole or any part of such loan, or if any part of such loan has been repaid otherwise than by capital money for re-borrowing the amount so repaid, and for the purpose of this section, "capital money" includes any instalments, annual appropriations, and sinking fund and the proceeds of the sale of land or other property, but does not include money previously borrowed for the purpose of repaying a loan.

(4) All money re-borrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for re-borrowing shall for the purpose of the ultimate discharge be deemed to form part of the same loan as the original loan, and the obligations of the council with respect to the discharge of the original loan shall not be in any way affected by means of the re-borrowing.

(5) A loan under this section shall be repaid within such period, not exceeding thirty years, as the county council, with the consent of the Local Government Board, determine in each case.

(6) The county council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with the Local Loans Act, 1875, and the Acts amending the same.

(7) Where a loan is raised for any special county purpose, the council shall take care that the sums payable in respect of the loan are charged to the special account to which the expenditure for that purpose is chargeable.

(8) Where the county council are authorised to borrow any money on loan they may raise such money either as one loan or several loans, and either by stock issued under this Act, or by debentures or annuity certificates under the Local Loans Act, 1875, and the Acts amending the same, or, if special reasons exist for so borrowing, by mortgage, in accordance with sections two hundred and thirty-six and two hundred and thirty-seven of the Public Health Act, 1875.

(9) Provided that where a county council have borrowed by means of stock they shall not borrow by way of mortgage except for a period not exceeding five years.

(10) Where the county council borrow by debentures such debentures may be for any amount not less than five pounds.

(11) The provisions of this section which authorise advances in aid of the emigration or colonisation of inhabitants of the county, and borrowing for those advances, except the provisions respecting the total debt, shall extend to the councils of boroughs mentioned in the third Schedule to this Act.

(12) Nothing in this section shall be taken to empower the Cheshire County Council to borrow on the security of any revenue estimated to accrue from the surplus funds of the River Weaver Navigation.

TENANTS COMPENSATION ACT, 1890.

(53 & 54 VICT. c. 57.)

An Act to amend the law with respect to Compensation due to tenants on land under mortgage. [11th August, 1890.]

BE IT ENACTED as follows:—

1. *Construction and short title.*—This Act shall be construed as one with the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (in this Act referred to as the principal Acts), and this Act may be cited as the Tenants Compensation Act, 1890.

2. *Compensation to tenants, when mortgagee in possession.*—Where a person occupies land under a contract of tenancy with the mortgagor, whether made before or after the passing of this Act, which is not binding on the mortgagee of such land, then—

(1) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or

would but for the mortgagee taking possession be due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the land, whether under the principal Acts or the custom of the country, or agreements sanctioned by the principal Acts:

Provided that any sum ascertained to be due to the occupier for such compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.

- (2) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the principal Acts, and shall be set off, charged, and recovered in manner before provided in this section. This subsection shall only apply where the said contract is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent.

3. 51 & 52 Vict. c. 51, to apply to compensation under 46 & 47 Vict. c. 61, s. 31.—Where compensation for improvements comprised in Part One or Part Two of the First Schedule to the Agricultural Holdings (England) Act, 1883, is charged by an order under section thirty-one of that Act, the charge shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, and shall be registered accordingly.

4. *Exception of tithe rentcharge* 6 & 7 Will. 4, c. 71.—This Act shall not apply to provisions for the payment of tithe rentcharge arising under the Tithe Commutation Act, and subsequent Acts relating thereto.

LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 VICT. c. 11.)

An Act to amend the law relating to the taxation of costs under the Lands Clauses Acts. (*a*) [14th May, 1895.]

(*a*) But see the Small Holdings Act, 1907, Sched. I., Part. I. (6).

BE IT ENACTED as follows :

1. *Fees for taxing costs in compensation inquiries and arbitrations.*—(1) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

(2) Section forty-five of the Regulation of Railways Act, 1868, and section one of the Lands Clauses Consolidation Act, 1869, are hereby repealed.

2. *Short title.*—This Act may be cited as “The Lands Clauses (Taxation of Costs) Act, 1895.”

MARKET GARDENERS COMPENSATION ACT, 1895.

(58 & 59 VICT. c. 27.)

An Act to extend and amend the Provisions of the Agricultural Holdings (England) Act, 1883, so far as they relate to Market Gardens. [6th July, 1895.]

BE IT ENACTED as follows :

1. *Short title and construction.*—This Act may be cited as “The Market Gardeners Compensation Act, 1895,” and shall be read and construed as part of the Agricultural Holdings (England) Act, 1883, hereinafter called “the principal Act,” as amended by the Tenants Compensation Act, 1890.

MARKET GARDENERS COMPENSATION ACT, 1895. 219

2. Commencement of Act on 1st January, 1896.—This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-six, which date is hereinafter referred to as “the commencement of this Act.”

3. Extended operation, if agreed to in writing, of Act of 1883, on market gardens.—Where after the commencement of this Act it is agreed in writing that a holding shall be let or treated as a market garden, the following provisions shall have effect :

- (1) The provisions of section thirty-four of the principal Act shall extend to every fixture or building affixed or erected by the tenant to or upon such holding for the purposes of his trade or business of a market gardener.

[Subsections (2) and (8) were repealed by the *Agricultural Holdings Act, 1900.*]

- (4) Section fifty-six of the principal Act shall be read and construed as if the words “with the consent in writing of his landlord” were not included therein.

- (5) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out ; but if the tenant shall not remove such fruit trees and fruit bushes before the termination of his tenancy, such fruit trees and fruit bushes shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

4. Application to current tenancies where holding used as market garden with knowledge of landlord.—Where, under a contract of tenancy current at the commencement of this Act, a holding is at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any of the improvements in respect of which a right of compensation or removal is given to a tenant by this Act, then the provisions of this Act shall apply in respect of such holding, as if it had been agreed in writing after the commencement of this Act that the holding should be let or treated as a market garden.

5. As to crown lands and lands belonging to the Duchies of Lancaster and Cornwall.—Any compensation payable under this Act shall as regards land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown or in right of the Duchy of Lancaster, and as regards land belonging to the Duchy of Cornwall, be paid in the same manner and out of the same funds respectively as if it were payable in respect of an improvement mentioned in the first part of the first schedule to the principal Act, except that as

regards land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown, compensation for planting strawberry plants and asparagus and other vegetable crops shall be paid in the same manner and out of the same funds as if it were payable in respect of an improvement mentioned in the third part of the said schedule.

6. *Interpretation.*—For the purposes of the principal Act and of this Act the expression “market garden” shall mean a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market gardening.

LAND TRANSFER ACT, 1897.

(60 & 61 VICT. c. 65.)

An Act to establish a real representative and to amend the Land Transfer Act, 1875. [6th August, 1897.]

PART II.

AMENDMENTS OF THE LAND TRANSFER ACT, 1875.

7. *Right to indemnity in certain cases.*—(1) Where any error or omission is made in the register, or where any entry in the register is made or procured by or in pursuance of fraud or mistake, and the error, omission, or entry is not capable of rectification under the principal Act, any person suffering loss thereby shall be entitled to be indemnified in the manner in this Act provided.

(2) Provided that where a registered disposition would if unregistered be absolutely void, or where the effect of such error, omission, or entry would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the register shall be rectified and the person suffering loss by the rectification shall be entitled to the indemnity.

(3) A person shall not be entitled to indemnity for any loss where he has caused or substantially contributed to the loss by his act, neglect, or default, and the omission to register a sufficient caution, notice, inhibition, or other restriction to protect a mortgage by deposit or other equitable interest, or any estate or interest created under section forty-nine of the principal Act, shall be deemed neglect within the meaning of this sub-section.

(4) Where the register is rectified under the principal Act by reason of fraud or mistake which has occurred in a registered disposition for valuable consideration, and which the grantee was not aware of and could not by the exercise of reasonable care have

discovered, the person suffering loss by the rectification shall likewise be entitled to indemnity under this section.

(5) The registrar may, if the applicant desires it, and subject to an appeal to the court, determine whether a right to indemnity has arisen under this section, and, if so, award indemnity. In the event of an appeal to the court, the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the court shall consider that the appeal is unreasonable.

(6) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his act, neglect, or default.

(7) A claim for indemnity under this section shall be deemed a simple contract debt, and for the purposes of the Limitation Act, 1623, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might know, of the existence of his claim. This section shall apply to the Crown in like manner as it applies to a private person.

8. Land certificates, office copies of registered leases, and certificates of charge.—(1) So long as a land certificate, office copy of a registered lease, or certificate of charge, is outstanding, it shall be produced to the registrar on every entry in the register of a disposition by the registered proprietor of the land or charge to which it relates, and on every registered transmission or rectification of the register, and a note of every such entry, transmission, or rectification shall be officially endorsed on the certificate or office copy, and the registrar shall have the same powers of compelling the production of certificates and office copies as are conferred on him by sections one hundred and nine and one hundred and ten of the principal Act as to the production of maps, surveys, books, and other documents.

(2) Where a land certificate, or office copy of a registered lease has been issued, the vendor shall deliver it to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate or office copy is sold, he shall, at his own expense, produce, or procure the production of, the certificate or office copy in accordance with this section for the completion of the purchaser's registration. Where the certificate or office copy has been lost or destroyed, the vendor shall pay the costs of the proceedings required to enable the registrar to proceed without it.

(8) A new land certificate, office copy of a registered lease or certificate of charge, shall not be granted by the registrar in place of a former certificate, or office copy, which has been lost or destroyed, unless the applicant has filed with the registrar a statutory declaration and such other evidence, if any, as the registrar may think necessary, stating the fact and circumstances of the loss or destruc-

tion of the former certificate or office copy, nor until at least one advertisement of the application in the London Gazette and three advertisements in a London daily morning newspaper shall have been published at intervals of not less than seven days, and three advertisements in a local newspaper circulating in the district in which the land is situate, and such indemnity (if any) given as the registrar shall think fit.

(4) Where a transfer of land is made by the registered proprietor, of a charge, in exercise of the power of sale conferred by the charge, it may be registered, and a new land certificate may be issued to the purchaser, without production of the former land certificate, but the certificate of charge (if any) must be produced or accounted for in accordance with this section. Subject to any stipulation to the contrary the proprietor of a registered charge shall not be entitled to have custody of the land certificate, or to require a land certificate to be applied for :—

- (i) On the first registration of freehold or leasehold land, and on the registration of a charge, a land certificate, office copy of the registered lease, or certificate of charge, as the case may be, shall be prepared, and shall either be delivered to the registered proprietor or deposited in the registry as the said proprietor may prefer ;
- (ii) If so deposited in the registry it shall be officially endorsed from time to time, as in this section provided, with notes of all subsequent entries in the register affecting the land or charge to which it relates ;
- (iii) The registered proprietor may at any time apply for the delivery of the certificate or office copy to himself or to such other person as he may direct, and may at any time again deposit it in the land registry ;
- (iv) The preparation, issue, endorsement, and deposit in the registry of the certificate or office copy shall be effected without cost to the proprietor.

The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land or charge by deposit of the land certificate or office copy of registered lease, or certificate of charge ; and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled in fee simple or for the term or interest created by the lease for his own benefit, or by a mortgagee beneficially entitled to the mortgage.

9. *Transfer and charges.*—(1) The provisions of section eight of the Conveyancing and Law of Property Act, 1881, shall apply, so far as applicable thereto, to transfers of registered land, as though

such transfers were made by deed, and a transfer of land, made by the proprietor of a registered charge with power of sale shall operate as a conveyance in professed exercise of the power of sale conferred by the said Act.

(2) The provisions of sections nineteen, twenty, twenty-one (except sub-sections one and four), twenty-two, twenty-three, and twenty-four of the same Act, shall similarly apply to registered charges.

(3) Every registered proprietor of land may in the prescribed manner charge it with an annuity or other periodical payment, and the provisions of the principal Act and this Act with regard to charges shall apply to any such charge. Every registered proprietor of land may charge it, in favour of a building society under the Building Societies Acts, by means of a mortgage made in pursuance of or consistent with the rules of that society, and the mortgage shall be deemed a charge made in the prescribed manner, and shall be registered accordingly.

(4) Nothing contained in any charge shall (i) take away from the registered proprietor thereof the power of transferring it by registered disposition or of requiring the cessation thereof to be noted on the register, or (ii) affect any registered dealing with land or a charge in respect of which the charge is not expressly registered or protected, in accordance with the principal Act and this Act.

(5) The registrar may, on the application, or with the consent, of the registered proprietor of the land, and of the proprietors of all registered charges (if any) of equal or inferior priority, alter the terms of a charge.

(6) Where a person on whom the right to be registered as proprietor of land or of a charge has devolved by reason of the death or bankruptcy of the registered proprietor, or has been conferred by an instrument of transfer or charge, in accordance with the principal Act and this Act, desires to transfer or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions. Subject to the provisions of the principal Act with regard to registered dealings for valuable consideration, a transfer or charge so made shall have the same effect as if the person making it were registered as a proprietor,

10. Penalty for unqualified persons drawing instruments.—

Every person who (not being a barrister or a duly certificated solicitor, notary public, conveyancer, special pleader, or draughtsman in equity) either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument of transfer or charge, or an application to register restrictive conditions, or to alter or discharge, or alter the priority of a registered charge, or any other prescribed

instrument, shall incur a fine not exceeding fifty pounds, which shall be recoverable before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided that this section shall not extend to—

- (a) any public officer drawing or preparing instruments and applications in the course of his duty ; or
- (b) any person employed merely to engross any instrument or application.

11. *As to statute of 32 Hen. 8, c. 9.*—Section two of the statute of the thirty-second year of the reign of Henry the Eighth, chapter nine, which prohibits sales and other dispositions of land of which the grantor or his predecessor in title has not been in possession for one whole year previously to the disposition being made, is hereby repealed.

12. *As to title by possession.*—A title to registered land adverse to or in derogation of the title of the registered proprietor shall not be acquired by any length of possession, and the registered proprietor may at any time make an entry or bring an action to recover possession of the land accordingly. Provided that where a person would, but for the provisions of the principal Act or of this section, have obtained a title by possession to registered land, he may apply for an order for rectification of the register under section ninety-five of the principal Act, and on such application the Court may, subject to any estates or rights acquired by registration for valuable consideration in pursuance of the principal Act or this Act, order the register to be rectified accordingly. And provided also, that this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of such land at the time when the registration of such first proprietor took place.

13. *As to succession and estate duty.*—(1) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to succession duty and estate duty.

(2) If, on such application, it appears that there is, or is capable of arising, any such liability to succession duty or estate duty as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3) Succession duty and estate duty shall not—

- (a) unless so noted on the register ; or
- (b) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising ; or
- (c) unless in the case of a qualified title the liability to the duty

was included in the exceptions made on such original registration of the land ;
affect a bona fide registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

14. *Repeal in part of 38 & 39 Vict. c. 87, s. 83.*—(1) So much of section eighty-three of the principal Act as prohibits the registration of undivided shares, and limits the number of co-proprietors, and relates to the description, boundaries, and extent, and alteration of the description of registered land is repealed.

(2) Registered land shall be described in the prescribed manner by means of the ordnance map, together with such further verbal particulars (if any) as the applicant for registration may desire, and the registrar, or the court, if the applicant prefers, may approve, regard being had to ready identification of parcels, correct description of boundaries, and, as far as may be, uniformity of practice.

16. *Provisions as to vendor and purchaser on sales.*—(1) A purchaser of registered land shall not require any evidence of title, except—

- (i) the evidence to be obtained from an inspection of the register or of a certified copy of, or extract from, the register ;
- (ii) a statutory declaration as to the existence or otherwise of matters which are declared by section eighteen of the principal Act and by this Act not to be incumbrances ;
- (iii) if the proprietor of the land is registered with an absolute title, and there are incumbrances entered on the register as subsisting at the first registration of the land, either evidence of the title to those incumbrances, or evidence of their discharge from the register ;
- (iv) where the proprietor of the land is registered with a qualified title, the same evidence as above provided in the case of absolute title, and such evidence as to any estate, right, or interest excluded from the effect of the registration as a purchaser would be entitled to if the land were unregistered ;
- (v) if the land is registered with a possessory title, such evidence of the title subsisting or capable of arising at the first registration of the land as the purchaser would be entitled to if the land were unregistered.

(2) Where the vendor of registered land is not himself registered as proprietor of the land or of a charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of

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the charge, as the case may be, or procure a transfer from the registered proprietor to the purchaser.

(3) In the absence of special stipulation, a vendor of land registered with an absolute title shall not be required to enter into any covenant for title, and a vendor of land registered with a possessory or qualified title shall only be required to covenant against estates and interests excluded from the effect of registration, and the implied covenants under section seven of the Conveyancing and Law of Property Act, 1881, shall be construed accordingly.

18. *Minor amendments in Sched. I.*—The principal Act shall be further amended in regard to its minor details in the manner set forth in the First Schedule hereto.

19. *Registration of small holdings.*—(1) Where a county council apply in pursuance of section ten of the Small Holdings Act, 1892, for registration as proprietors of land, they may be registered as proprietors of that land, with any such title as is authorised by the principal Act.

(2) Where a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Act, 1892, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council.

PART III.

COMPULSORY REGISTRATION AND INSURANCE FUND.

21. *Insurance fund for providing indemnity.*—(1) For the purpose of providing indemnity payable under this Act, there shall be established an insurance fund to be raised by setting apart at the end of each financial year such portion of the receipts from fees taken in the land registry as the Lord Chancellor and the Treasury shall by order determine.

(2) The insurance fund shall be invested in such names and manner as the Treasury from time to time direct.

(3) If the insurance fund is at any time insufficient to pay indemnity for any loss chargeable thereon, the deficiency shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof; but any sum so paid out of the Consolidated Fund, or the growing produce thereof, shall be

repaid out of the money subsequently standing to the credit of the insurance fund.

(4) Accounts of the fund shall be kept, and be audited as public accounts, in accordance with such regulations as the Treasury from time to time make.

PART IV.

MISCELLANEOUS.

24. Interpretation.—(1) All hereditaments, corporeal and incorporeal, shall be deemed land within the meaning of the principal Act and this Act, except that nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such.

(2) In this Act the expression "personal representative" means an executor or administrator.

25. Commencement of Act.—This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

26. Short title and construction.—This Act may be cited as "The Land Transfer Act, 1897," and shall be construed as one with the principal Act, and that Act and this Act may be cited together as "The Land Transfer Acts, 1875 and 1897."

THE FIRST SCHEDULE.

(Section 18.)

MINOR AMENDMENTS OF THE PRINCIPAL ACT.

The sections of the principal Act mentioned in the first column of this schedule are repealed or amended to the extent and in the manner set forth in the third column.

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amend- ment.
2	Only land of freehold tenure to be registered.	If, at any time, land is found to have been registered with absolute or qualified title contrary to the provisions of this section, the registration shall not be annulled, but shall be deemed an error not capable of rectification under the principal Act, and any person suffering loss thereby shall be indemnified accordingly.
11	Registration of leasehold land.	A sub-lease shall, and a term created for mortgage purposes shall not, be deemed a lease within the meaning of this section.
18	Various rights and liabilities not to be incumbrances.	This section shall include estate duty, liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and profits <i>à prendre</i> , and, subject to the provisions of this Act, rights acquired or in course of being acquired under the limitation Acts.
18 (4) (5)	Rights to and in respect of mines and minerals not to be incumbrances.	These sub-sections shall apply only to rights created previously to the registration of the land or the commencement of this Act.
18, last paragraph.	Power for registrar to note on the register the existence of liabilities mentioned in the section.	<p>The power conferred on the registrar shall be exercised in all cases where the abstract of title on first registration or on registration as qualified or absolute discloses the existence of any such liabilities as are mentioned in sub-sections (4) and (5).</p> <p>Where an easement is registered as an incumbrance, the dominant and servient tenements shall be defined, if practicable and required by the parties.</p> <p>Notice of a power of re-entry and of a right of reverter may be entered on the register under this paragraph.</p>

THE FIRST SCHEDULE—*continued.*

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amend- ment.
19 and 28, second paragraph.	Discharge of incum- brances created prior to the regis- tration of the land, and of registered charges.	These sections shall apply to part discharges.
21	No acquisition of title by adverse possession.	Repealed.
22	Creation of charges.	Charges created under this section are subject to the provisions of the principal Act in respect of qualified or possessory titles.
30-33 and 35-38	Effect of transfers of freehold and leasehold land.	In the absence of anything to the contrary in the register, or in the transfer, or (in the case of leasehold land) in the lease, the word "land" in these sections includes the mines and minerals if parcel thereof.
40	Transfer of charges.	A registered transferee for value of a charge, and his successors in title, shall not be affected by any irregu- larity or invalidity in the original charge itself, of which the trans- feree was not aware when it was transferred to him.
58	Registration of re- strictions.	The words "for his own sake, or at the request of some person bene- ficially interested in such land" are repealed, and the section shall apply to charges as well as to land.
72	Title deeds to be marked with notice of registration.	In the case of registration with a possessory title, the registrar may act on such reasonable evidence as may be prescribed as to the suffi- ciency of the documents produced, and as to dispensing with their pro- duction in special circumstances.
78	Loss or destruction of land certificate.	Repealed.
84	Annexation of con- ditions to land.	Conditions may be annexed to land at any time, and the section shall apply to any restrictive condition capable of affecting assigns by way of notice.

AGRICULTURAL HOLDINGS ACT, 1900.

(63 & 64 VICT. c. 50.)

An Act to amend the Law relating to Agricultural Holdings.

[8th August 1900]

BE IT ENACTED, etc. :—

1. *Right of tenant to compensation for improvements.*—(1) Where a tenant has made on his holding any improvement comprised in the First Schedule to this Act he shall, subject as in the Agricultural Holdings (England) Act, 1883 (in this Act referred to as the principal Act) and in this Act mentioned, be entitled, at the determination of a tenancy, on quitting his holding to obtain from the landlord as compensation under the said Acts for the improvement such sum as fairly represents the value of the improvement to an incoming tenant. Provided always, that in estimating the value of any such improvement there shall not be taken into account, as part of the improvement made by the tenant, what is justly due to the inherent capabilities of the soil. [*This subsection will be repealed as from January 1st, 1909 : see Agricultural Holdings Act, 1906.*]

(2) References in the principal Act to the First Schedule to that Act shall be construed as references to the First Schedule to this Act.

(3) In the ascertainment of the amount of the compensation payable to a tenant under the principal Act or this Act there shall be taken into account any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement.

(4) In the ascertainment of the amount of the compensation payable to a tenant in respect of manures as defined by this Act, there shall be taken into account the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(5) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

2. *Settlement of differences by arbitration.*—(1) If a tenant claims to be entitled to compensation, whether under the principal Act or this Act, or under custom, agreement, or otherwise, in respect

of any improvement comprised in the First Schedule to this Act and if the landlord and tenant fail to agree as to the amount and time and mode of payment of such compensation, the difference shall be settled *by arbitration in accordance with the provisions, if any, in that behalf in any agreement between landlord and tenant, and in default of and subject to any such provisions* by arbitration under this Act in accordance with the provisions set out in the Second Schedule to this Act.

(2) Any claim by a tenant for compensation under the principal Act or this Act in respect of any improvement comprised in the First Schedule to this Act shall not be made after the determination of the tenancy. Provided that where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the claim may be made at any time before the tenant quits that part.

(3) Where any claim by a tenant for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any waste wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming such sum may, if he thinks fit, by written notice to the other party given by registered letter or otherwise not later than seven days after the appointment of the arbitrator or arbitrators, require that the arbitration shall extend to the determination of the further claim, and thereupon the provisions of this section with respect to arbitration shall apply accordingly, and any sum awarded to be paid by a landlord or tenant shall be recoverable in manner provided by the principal Act for the recovery of compensation.

(4) Where any claim which is referred to arbitration relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the arbitrator may, if he thinks fit, make a separate award in respect of such claim.

(5) *An arbitration shall, unless the parties otherwise agree, be before a single arbitrator.*

(6) If in any arbitration under this Act the arbitrator states a case for the opinion of the county court on any question of law, the opinion of the court on any question so stated shall be final unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal, from whose decision no appeal shall lie.

(7) Any person who wilfully and corruptly gives false evidence

before an arbitrator or *umpire* in any arbitration under this Act shall be guilty of perjury, and may be dealt with, prosecuted, and punished accordingly.

(8) *Subject to any provision contained in any agreement between landlord and tenant* the Arbitration Act, 1889, shall not apply to any arbitration to which this Act applies.

[The words in italics will be repealed as from January 1st, 1909 : see Agricultural Holdings Act, 1906.]

3. *Relates to the charge of compensation on a holding.*

4. *Fixtures and buildings.*—The provisions of section thirty-four of the principal Act shall apply to a fixture or building acquired by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant.

7. *Improvements executed before Act comes into operation.*—The compensation in respect of an improvement made before this Act comes into operation shall be such (if any) as could have been claimed if this Act had not been passed, but shall be ascertained in the manner provided by this Act.

9. *Interpretation.*—(1) References to “manures” in the principal Act and this Act shall be construed as references to the improvements numbered twenty-three, twenty-four, and twenty-five in Part III. of the First Schedule to this Act.

(2) This Act shall be construed as one with the principal Act.

12. *Repeal.*—The enactments specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

[The repeals have been noted in the foregoing prints of the Acts affected.]

13. *Commencement of Act.*—This Act shall come into operation on the first day of January one thousand nine hundred and one.

14. *Short titles.*—(1) This Act may be cited as the Agricultural Holdings Act, 1900.

(2) The Agricultural Holdings (England) Act, 1883, the Tenants Compensation Act, 1890, the Market Gardeners' Compensation Act, 1895, and this Act, may be cited together as the Agricultural Holdings (England) Acts, 1883 to 1900.

SCHEDULES.

FIRST SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

- (1) Erection, alteration, or enlargement of buildings.
- (2) Formation of silos.
- (3) Laying down of permanent pasture.
- (4) Making and planting of osier beds.
- (5) Making of water meadows or works of irrigation.
- (6) Making of gardens.
- (7) Making or improving of roads or bridges.
- (8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
- (9) Making or removal of permanent fences.
- (10) Planting of hops.
- (11) Planting of orchards or fruit bushes.
- (12) Protecting young fruit trees.
- (13) Reclaiming of waste land.
- (14) Warping or weiring of land.
- (15) Embankments and sluices against floods.
- (16) The erection of wirework in hop gardens.

[N.B.—*This part is subject as to market gardens to the provisions of Part III.*]

PART II.

IMPROVEMENTS IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- (17) Drainage.

PART III.

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

- (18) Chalking of land.
- (19) Clay-burning.
- (20) Claying of land or spreading blaes upon land.
- (21) Liming of land.

(22) Marling of land.

(23) Application to land of purchased artificial or other purchased manure.

(24) Consumption on the holding by cattle, sheep, pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.

(25) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.

(26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.

(27) In the case of a holding as to which section three of the Market Gardeners' Compensation Act, 1895, applies—

- (i) Planting of standard or other fruit trees permanently set out;
- (ii) Planting of fruit bushes permanently set out;
- (iii) Planting of strawberry plants;
- (iv) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years;
- (v) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

SECOND SCHEDULE.

RULES AS TO ARBITRATION.

PART I.

ARBITRATION BEFORE A SINGLE ARBITRATOR.

Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Board of Agriculture on the application in writing of either of the parties, shall be appointed arbitrator.

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment notice, revocation, and consent under this part of these rules must be in writing.

Time for Award.

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Board of Agriculture may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

6. Where an arbitrator has misconducted himself the county court may remove him.

Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

8. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

Statement of Case.

9. The arbitrator may at any stage of the proceedings, and shall, if so directed by the judge of a county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

Award.

10. The arbitrator shall on the application of either party specify the amount awarded in respect of any particular improvement or improvements, and the award shall fix a day not sooner than one month nor later than two months after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Board of Agriculture. [This rule will be repealed as from January 1st, 1909: see Agricultural Holdings Act, 1906, s. 1 (3).]

11. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside.

Costs.

14. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the county court on the application of either party, but that taxation shall be subject to review by the judge of the county court.

15. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

Forms.

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board of Agriculture shall, if used, be sufficient.

PART II.

[NOTE.—Part II. will be repealed as from Jan. 1, 1909: see Agricultural Holdings Act, 1906.]

ARBITRATION BEFORE TWO ARBITRATORS OR AN UMPIRE.

Appointment of Arbitrators and Umpire.

1. If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator.

2. If before award one of two arbitrators dies or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him shall appoint another arbitrator.

3. Notice of every appointment of an arbitrator by either party shall be given to the other party.

4. If for fourteen days after notice by one party to the other to appoint an arbitrator, or another arbitrator, the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be an arbitrator.

5. Where two arbitrators are appointed, then (subject to the provisions of these rules) they shall, before they enter on the arbitration, appoint an umpire.

6. If before award an umpire dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the arbitrators may appoint another umpire.

7. If for seven days after request from either party, the arbitrators fail to appoint an umpire, or another umpire, then, on the application of either party, the Board of Agriculture shall appoint a person to be the umpire.

8. Neither party shall have power to revoke an appointment of an arbitrator without the consent of the other.

9. Every appointment, notice, request, revocation, and consent under this part of these rules shall be in writing.

Time for Award.

10. The arbitrators shall make and sign their award in writing within twenty-eight days after the appointment of the last appointed of them, or on or before any later day to which the arbitrators, by any writing signed by them, may enlarge the time for making the award, not being more than forty-nine days from the appointment of the last appointed of them.

11. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to either party or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the arbitration in lieu of the arbitrators.

12. The umpire shall make and sign his award within one month after the original or extended time appointed for making the award of the arbitrators has expired.

13. The time for making an award may from time to time be extended by the Board of Agriculture, whether the time for making the award has expired or not.

Removal of Arbitrator, Evidence, Statement of Case, Award, Costs, Forms.

14. The provisions of Part I. of these rules as to the removal of an arbitrator, the evidence, the statement of a case, the award, costs, and forms shall apply to an arbitration in accordance with this Part as if the expression "arbitrator" whenever used in those provisions included two arbitrators or an umpire, as the case may require.

NOTE.—For procedure in the county court under the Agricultural Holdings Acts, 1883 to 1900, reference should be made to the County Court Rules, 1903, Order XL.

An order of the Board of Agriculture, dated December 31, 1900, prescribed fees to be taken in respect of transactions under the Agricultural Holdings Acts, 1883 to 1900, see Statutory Rules and Orders, 1901, No. 144.

AGRICULTURAL HOLDINGS ACT, 1906.

(6 & 7 Edw. 7, c. 56.)

AN Act to amend the Law relating to Agricultural Holdings. (a)

[21st December 1906.]

(a) This Act does not come into operation until January 1, 1909.

BE IT ENACTED, etc. :—

1. *Amendment of 63 & 64 Vict. c. 50.*—(1) Subsection (1) of section one of the Agricultural Holdings Act, 1900, shall be repealed and for it substituted :—

Where a tenant has made on his holding any improvement comprised in the First Schedule to this Act, he shall, subject as in the Agricultural Holdings (England) Act, 1883 (in this Act referred to as “the principal Act”) and in this Act mentioned, be entitled at the determination of a tenancy on quitting his holding to obtain from the landlord, as compensation under the said Acts for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant.

(2) All questions which, under the Agricultural Holdings (England) Acts, 1883 to 1900, or this Act, or under the contract of tenancy, are referred to arbitration shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement to the contrary, by a single arbitrator, in accordance with the provisions set out in Part I. of the Second Schedule to the Agricultural Holdings Act, 1900, and any sum awarded by such arbitrator to be paid shall be recoverable in manner provided by the Agricultural Holdings (England) Acts, 1883 to 1900, for the recovery of compensation.

(3) The following rule shall be substituted for rule (10) in Part I. of the Second Schedule to the Agricultural Holdings Act, 1900 :—

The arbitrator shall on the application of either party specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or later than two months after the delivery of the award for the payment of the money awarded as compensation, costs or otherwise, and shall be in such form, as may be prescribed by the Board of Agriculture and Fisheries.

2. (*This section relates to compensation for damage done by game.*)

3. *Freedom of cropping and disposal of produce.*—(1) Notwithstanding any custom of the country or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant shall have full right to practise any system of cropping of the arable land on his holding and to dispose of the produce of his holding without incurring any penalty, forfeiture, or liability: Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall in the case of disposal of the produce of the holding consist in the return to the holding of the full equivalent manorial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement:

Provided that this subsection shall not apply—

- (a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding; or
- (b) in any other case, as respects the year before the expiration of the contract of tenancy.

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall without prejudice to any other remedy which may be open to him be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction restraining the exercise of the rights under this section in that manner, and the amount of such damages may, in default of agreement, be determined by arbitration.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the First Schedule to the Agricultural Holdings Act, 1900, which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.

(4) In this section the expression “arable land” shall not include land in grass, which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

4. (*This section relates to compensation for unreasonable disturbance.*)

5. *Retrospective effect of 58 & 59 Vict. c. 27, s. 4, & 60 & 61 Vict. c. 22.*—Section four of the Market Gardeners' Compensation Act, 1895, and section four of the Market Gardeners' Compensation (Scotland) Act, 1897, shall apply to improvements executed before

the dates of the commencement of those Acts respectively in like manner as the sections apply to improvements executed after those dates.

6. *Consent of landlord not required for certain improvements.*—The following improvements shall be included in Part III. of the First Schedule to the Agricultural Holdings Act, 1900:—Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute:

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

7. *Record of holding.*—If at the commencement of any tenancy entered into after the commencement of this Act either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding shall be made within three months after the commencement of the tenancy by a person to be appointed in default of agreement by the Board of Agriculture and Fisheries, and in default of agreement the cost of making such record shall be borne by the landlord and tenant in equal proportions.

8. *Repeal.*—The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

9. *Commencement of Act.*—This Act shall come into operation on the first day of January one thousand nine hundred and nine.

10. *Short title.*—This Act may be cited as the Agricultural Holdings Act, 1906, and shall be read and construed and may be cited with the Agricultural Holdings (England) Acts, 1883 to 1900.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
63 & 64 Vict. c. 50	The Agricultural Holdings Act, 1900.	Subsection (1) of section one. In section two, the words "by arbitration in accordance with the provisions (if any) in that behalf in any agreement between landlord and tenant, and in default of and subject to any such provisions"; the words "or arbitrators"; the words "an arbitration shall, unless the parties otherwise agree, be before a single arbitrator"; the words "or umpire"; and the words "subject to any provision contained in any agreement between landlord and tenant." Second Schedule, Part II.

APPENDIX III.

THE LAND REGISTRY (SMALL HOLDINGS) RULES, 1892.

(Made August 9, 1892, pursuant to s. 10 of the *Small Holdings Act, 1892.*)

PRELIMINARY.

1. In these rules the *Small Holdings Act, 1892*, is referred to as the Act.

PART I.

REGISTRATION OF LAND ON ACQUISITION BY A COUNTY COUNCIL.

1.—*Generally.*

2. Application by a county council for registration as proprietor, with absolute title of land acquired in pursuance of the Act, shall be made in Form 1, or to the like effect, and shall be signed by the clerk or the solicitor to, or some other responsible officer of, the council, and shall be accompanied by a map of the land (prepared according to Rule 6 of the Land Registry Rules, 1889 (a)), the convey-

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ance to the council, and a statutory declaration by the solicitor of the council, or such other solicitor as may have been employed by them in the purchase, in Form 2, or to the like effect. (b)

(a) See now Rules 269 and 270 of 1903, the effect of which is given in page 12 of the Introduction, *ante*.

(b) See Land Transfer Act, 1897, s. 19 (p. 226, *ante*), and Land Transfer Rules, 1903, Nos. 18 *et seq.*

3. If the council have purchased in consideration of a fee farm or other rent secured by a condition of re-entry or otherwise, whether under section 13 of the Act or under section 10 of the Lands Clauses Consolidation Act, 1845, or if the land is subject to any incumbrance, or if it be known that the mines and minerals are excepted, the fact shall be stated and short particulars given in the statutory declaration aforesaid.

4. On receipt of the application the aforesaid statutory declaration shall be filed and referred to on the register, and the registrar shall register the county council as proprietors of the land for the purposes of the Act, with an absolute title, if satisfied that they have a good holding title, or, if not so satisfied, he shall register the county council provisionally pending further investigation, with such other title as is authorised by the Land Transfer Act, 1875; and in the latter case the purchasers from the county council shall, pending the completion of the absolute registration, have the benefit of the title possessed by the county council at the time of their provisional registration, and on the registration of such purchasers a note shall be made on the register accordingly.

5. The completion of the registration with absolute title shall be proceeded with or may be allowed to stand over for such period and subject to such conditions as the registrar shall direct.

6. At any time before the actual registration of the title as absolute any person may lodge a caution against such absolute registration being made, similar to and with the like effect as a caution against entry of land on the register.

7. The title of the county council may be registered as absolute at such time after the appearance of the advertisement of the application as the registrar shall think fit.

8. In the event of a small holding by the county council, being either a part or the whole of the land comprised in a title, during the period between the provisional registration and the completion of registration, with an absolute title, the county council shall, nevertheless, proceed to complete the registration with absolute title of the whole of the land comprised in the provisional registration, and upon such completion the purchaser of the small holding shall be registered as proprietor with an absolute title of the purchased land.

II.—*Investigation of Title under Conveyancing Counsel outside the Office.*

9. If at any time, either before or after the purchase of land, and either before or after the leaving of a formal application for registration, the county council desire to have the title investigated through the registry with a view to registration with absolute title, they may apply to the registrar for a reference of the title to any land they have purchased, or are about to purchase, to a conveyancing counsel, and the registrar shall, if he think proper, refer them to such conveyancing counsel (of not less than 10 years' standing) as he shall think fit.

10. The title shall be investigated by such counsel, and the conveyance (if not already settled) shall be settled by him under the instructions of the county council, and shall describe the property by reference to the Ordnance map.

11. If the application for registration by the county council is made after the execution of the conveyance, they shall leave with the application a report on their title signed by the conveyancing counsel by whom the investigation was made.

12. Such report shall state whether or not the title of the county council appears to be a good holding title, and whether or not there are any qualifications, incumbrances, conditions, exceptions or other matters affecting it, which ought to be entered on the register, and, if any, the details thereof.

13. The registrar may act on such report, and may register the title as absolute or qualified accordingly, but if it appear to the registrar that the title, though open to objection, is one the holding under which will not be disturbed, he may register the same as absolute or otherwise proceed under the 17th section of the Land Transfer Act, 1875.

14. Where the title has already been investigated by any such conveyancing counsel as aforesaid, the county council may request that the reference be made to such counsel if the registrar so think fit.

15. Where the sale has been completed without the opinion of such conveyancing counsel as aforesaid being taken, the title may be referred and proceeded with in the same manner as above prescribed, as soon as the application for registration is left in the office.

PART II.

REGISTRATION OF SALES BY COUNTY COUNCIL FOR SMALL HOLDINGS.

16. On a sale of small holding by the county council, the instrument of transfer shall be in Form 3.

17. Where the whole of the purchase money is not paid on completion, the purchaser shall execute a charge in Form 4, 5 or 6, with such additions and modification as the circumstances may require.

18. Such charge, so executed, shall be entered on the register, and shall (subject to the provisions of the Act) operate in all respects as a charge made by a registered proprietor of the land, and may be dealt with on the register accordingly.

19. An entry shall be made on the register to the effect that the land was originally acquired under the Act, giving also the date of the sale by the county council, and showing that the land is subject generally to such of the restrictions and conditions imposed by the Act as may for the time being be subsisting. (a)

(a) See Small Holdings Act, 1892, s. 9 (p. 39, *ante*).

20. Such entry may be modified or removed with the consent of the county council, and on production of a certificate signed by the clerk or solicitor, or other responsible officer of the said council, to the effect that the land is no longer subject to the conditions contained in section 9 of the Act, or that the requirements of section 11 of the Act have been complied with respectively.

21. The cost of the land certificate to be issued to the purchaser from the county council shall, for the purposes of section 6, subsection (1) of the Act, be included in the costs of registration of title.

PART III.

SALES BY OR WITH THE CONSENT OF THE COUNTY COUNCIL UNDER SECTION 9 OF THE ACT.

22. On any sale made by the county council under section 9 of the Act, the county council shall have power to transfer the land, and the instrument of transfer shall be in Form 7 or to the like effect.

23. The provisions hereinbefore contained as to the creation of incumbrances by the first purchaser of a small holding shall apply to any such sale. (a)

(a) See rules 17 & 18 *supra*.

24. The transferee shall be registered as proprietor, and suitable entries and cancellations shall be made on the register according to

the terms of the transfer, and no evidence shall be required by the registrar as to the happening of any of the events mentioned in the said section 9 as giving rise to the powers of the county council, or the fulfilment of any of the provisions in that section contained. (a)

(a) See Land Transfer Act, 1897, s. 19 (p. 226, *ante*).

PART IV.

PROCEEDINGS ON THE DEATH OF THE PROPRIETOR OF A SMALL HOLDING.

25. On the death of the sole proprietor, or of the survivor of several joint registered proprietors of a small holding, the registrar may enter the executor or administrator (if any) as proprietor in the place of the deceased proprietor without regard to the beneficial title.

26. The application for such registration shall be in Form 8.

27. In the exercise of his power as registered proprietor of the land, such executor or administrator shall be a trustee for all persons beneficially interested and (except for purposes of registered dealings for value with the land) the registration of the executor or administrator shall not affect the beneficial ownership of the land.

28. Production of the probate or letters of administration shall be sufficient proof of the death of the proprietor and of the execution and validity of the will, or the fact of the intestacy.

29. A statutory declaration of identity in Form 9 or to the like effect shall be the only additional evidence required.

30. Where the will is not proved, or no administration is taken out, the registrar shall proceed as prescribed by section 41 of the Land Transfer Act, 1875. (a)

(a) Rules 25-30 must be read in connection with Part I. of the Land Transfer Act, 1897, and the Land Transfer Rules, 1903, Nos. 183-190.

PART V.

LOCAL OFFICERS.

31. The registrar may, on the application of the county council, appoint suitable persons as local registrars for the purposes of section 10 of the Act.

32. Every person so appointed shall be either a barrister or a solicitor, or an officer of the county council, or a district registrar of the high court, or a registrar of the county court, or a registrar of an existing local deed registry.

33. The local registrar shall supply information to the owners of small holdings and other persons in regard to all matters connected with registration and transfer of land under the Act, and shall give all necessary assistance in the preparation of instruments for registration and transfer under the Act.

34. The remuneration of the local registrar shall be provided by the county council, and shall be regulated in such manner as they shall determine.

35. A reasonable contribution to the remuneration of the local registrar may, for the purposes of section 6, sub-section (1) of the Act, be included in the cost of registration of title.

36. The persons appointed as hereinbefore mentioned may be removed by the registrar at any time for incompetence or failure to perform their duties in a satisfactory manner, or (on the application to the county council) on the ground that the amount of business is insufficient to require such local assistance.

PART VI.

MISCELLANEOUS.

37. Where the land purchased by the county council is already registered with an indefeasible title under the Land Registry Act, 1862, or with an absolute title under the Land Transfer Act, 1875, the proceedings under these rules shall be modified in such manner as the registrar may deem convenient.

38. Every instrument of transfer or charge duly executed relating to a small holding shall (so far as consistent with the Act) take effect as a conveyance or mortgage by deed, and the provisions of the Conveyancing Act, 1881, shall take effect accordingly, except as varied or negatived in the instrument or by these rules. (a)

(a) As to execution and attestation, see Land Transfer Rules, 1908, Nos. 107-110.

39. So long as land is registered as subject to the Act, no transfer (including a transfer by the registered proprietor of a charge) or charge shall be registered without the consent of the county council, testified by their concurring in the execution thereof.

40. On any sale by the registered proprietor of a charge, the instrument of transfer shall be deemed to have been made in professed exercise of the power of sale (if any) implied in the charge.

41. On any transfer for value of land, made by the registered proprietor of a registered charge or incumbrance conferring a power

of sale, it shall be assumed that the transfer is made in exercise of the power, and that the land transferred is sold free from the charge, and from all charges registered subsequently thereto.

42. No purchaser of land, provisionally registered under these rules, or registered with an absolute title, shall (in the absence of express stipulation to the contrary) require any further title beyond that to be obtained by an inspection of the register, or a certified extract from, or copy of the register (to be furnished at his expense), and a statutory declaration (at the like expense) as to the existence or otherwise of matters which are declared by section 18 of the Land Transfer Act, 1875, not to be incumbrances within the meaning of that Act. (a)

(a) Rule 42 is now inoperative, by virtue of sections 19 (2) of the Land Transfer Act, 1897 (see p. 226, *ante*).

43. In applying the 3rd and 6th subsections of section 88 of the Land Transfer Act of 1875 to small holdings, the word "registrar" shall be substituted for the word "court."

44. Any land on which a county council has advanced money under section 19 (b) of the Act may, with the consent of the county council, be registered, provisionally or otherwise, in like manner and with the like effect as hereinbefore provided with respect to land originally acquired by the county council for the purposes of the Act.

(b) This is evidently a misprint for section 17.

45. Where land is sold or exchanged by the county council under section 15 of the Act, the instrument of transfer shall contain additions in Form 10 or to the like effect.

46. On receipt of such transfer, the registrar shall register the transferee without further inquiry as to the fulfilment of the provisions of the said section, and shall cancel all references to the Act that may have been entered on the register and that no longer affect the land.

47. Except as varied by these Rules, the existing Rules made under the Land Transfer Act, 1875, shall apply to small holdings.

48. These Rules may be cited as The Land Registry (Small Holdings) Rules, 1892, and shall commence on the 1st of October, 1892.

SCHEDULE OF FORMS.

FORM 1.

Application by a County Council for First Registration as Proprietors of Land.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

The county council of
 apply to be registered as proprietors with absolute title of the land
 shown and edged with red on the accompanying map marked
 , which land is also comprised in the
 accompanying conveyance marked
 , and is also referred to in the accompanying statutory declaration
 marked

Dated the of 189 .

(Signature of the clerk, solicitor, &c., to
 the council.)

The address for service of the said council is at

FORM 2.

Statutory Declaration to accompany Application in Form 1.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

In the matter of the application of the county council of

I,
 of

Solicitor, do solemnly and sincerely declare as follows :—

I acted for the above-named council in the purchase of the land
 shown and edged with red on the map marked now
 produced and shown to me. As such solicitor I examined the
 vendor's title in manner following [here state particulars of examina-
 tion, length of title shown, name of counsel (if any) employed, special

conditions (if any), comparison of abstract, name and address of vendor and vendor's solicitor, &c., &c.].

The investigation so made was, in my opinion, as full an investigation of the vendor's title as was reasonably possible and suitable under the circumstances of the case.

I (or the said counsel where employed) advised that the title was a good holder's title, and I know of nothing which would lead me to suppose that there is any adverse claim in existence against it.

The said land has been duly conveyed to the said council (subject to the incumbrances, leases, conditions, the farm rent, &c., &c., set forth in the schedule hereto).

From the above consideration I am able to state that the said council have a good holding title to the said land (subject as aforesaid).

THE SCHEDULE.

And I make, &c.

FORM 3.

Instrument of Transfer on a Sale of a Small Holding by the County Council.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

of 189 . In consideration of £ [and if so of
the perpetual rent charge of £ secured by instrument of
even date herewith or otherwise as provided by section 6 of the Act]
The County Council of hereby transfer
to
of .

all the land [shown and edged with red on the map marked
sealed by the said Council and also signed by or
on behalf of the said transferee being part of the land] comprised
in the title above referred to for the purposes of a small holding
under the Small Holdings Act, 1892.

The seal of the County Council.

FORM 4.

Perpetual Rent Charge to secure part of Purchase Money for a Small Holding.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

of 189 . To secure
£ , part of the purchase money of the land [shown
and edged with red on the map marked , signed by
me, being part of the land] comprised in the title above referred to
I,
of
hereby charge the said land with the payment to the county council
of
of a perpetual yearly rent charge of £
payable on the of
the of in every year.

The charge will be printed on a double folio, similarly to charges made under the Land Registry Rules of 1889, to be obtained at the Registry.

N.B.—*Sec. 44 of Conveyancing Act, 1881, combined with Rule 38, gives necessary powers of distress and entry.*

(For an extended form of transfer see p. 125, ante.)

FORM 5.

Charge repayable by Half-yearly Instalments to secure part of Purchase Money for a Small Holding.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

of 189 . To secure £ , part of the purchase
money of the land [shown and edged with red on the map marked
, signed by me, being part of the land] comprised
in the title above referred to, I
of
hereby charge the said land with the payment to the county council
of of the sum of £ payable by the
half-yearly instalment of £ with interest at

per cent. per annum on the amount for the time being remaining
unpaid on the of and the of
in every year.

The charge will be printed on a double folio, similarly to charges under the Land Registry Rules of 1889, to be obtained at the Registry.

N.B.—All further necessary powers are in ss. 22 to 28 of the *Land Transfer Act, 1875, Conveyancing Act, 1881, ss. 19 to 22, and Rules 38 & 40.*

FORM 6.

Terminable Annuity to secure part of Purchase Money for a Small Holding.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

of 189 . To secure £ , part of the purchase money of the land [shown and edged with red on the map marked , signed by me being part of the land] comprised in title above referred to, and interest thereon at per cent. per annum, I

of hereby charge the said land with the payment to the county council of of an annuity of £ for years payable half-yearly on the day of and the of in every year.

The charge will be printed on a double folio similarly to charges under the Land Registry Rules of 1889, to be obtained at the Registry.

N.B.—S. 44 of *Conveyancing Act, 1881, combined with Rule 38, gives necessary powers of distress and entry.*

FORM 7.

Instrument of Transfer on Sale by County Council under Section 9 of the Small Holdings Act, 1892.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

of 189 . In consideration of £ [and if so of the perpetual rent-charge of £ secured by instrument of even date herewith, or otherwise as provided by section 6 of the Act],

and by virtue and in pursuance of section 9 of the Small Holdings Act, 1892. The county council of

hereby transfer to
of

the land comprised in the title
above referred to [free from the charge (s) dated the of
18 , and the of 18 ,
and the annuity dated the of 18 ,
registered against the said title [as the case may be], and free
from the conditions (b), (c), (d), &c., of sub-section 1 of the said
section 9 of the said Act.

Seal of the Council.

FORM 8.

Application for Registration of the Executor or Administrator of a Deceased Proprietor.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

A. B., of
the executor [administrator] of C. D., of
deceased, the registered proprietor of the above title, hereby applies
for registration in his place.

Dated the of 189 .

(Signature of executor [or administrator]
or his solicitor.)

FORM 9.

Statutory Declaration of Identity of a Testator or Intestate.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

I of
solemnly and sincerely

declare as follows:—

I knew C. D. of
the Testator [intestate]
named in the probate [letters of administration] now produced and

shown to me marked . The said C. D. was to the
best of my knowledge and belief the same person as the C. D. of
[Registered address]
named in the register under the title above referred to
And I make, &c.

FORM 10.

*Additions to Instrument of Transfer on Sale under Section 15
of "The Small Holdings Act."*

(1.) After "In consideration of £ " add "and by
"virtue and in pursuance of section 15 of the Small Holdings
"Act, 1892."

(2.) At the end of the Instrument add "to hold the same free
"from all obligations and liabilities under or by reason of the
"said Act."

[For further forms see under title "FORMS" in Index.]

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL
HOLDINGS ACT, 1892.

ORDER AS TO FEES.

RULE.

I, The Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Treasury, by virtue and in pursuance of the Land Transfer Act, 1875, and the Small Holdings Act, 1892, and of all other powers and authorities enabling in that behalf, Do determine that the fees to be paid in the Land Registry in respect of transactions under the last mentioned Act shall be regulated as follows, namely:—

The fee for provisional registration (to be paid on leaving the application for registration) shall be the same as for an absolute title, but no fee shall be charged on the complete registration of the same as absolute. (a)

(a) See Land Registry (Small Holdings) Rules, 1892, rule 4 (p. 242, *ante*), and also rule 4 of the Fee Order, 1903, which order should be generally referred to on the question of fees.

The fee payable on the registration of a purchase of a Small Holding on first transfer from the county council shall be $\frac{1}{4}d.$ in the £, and no registration fee shall be payable in respect of any charge made by such purchaser in favour of the county council as part of the purchase arrangement if left for registration within three months of the registration of such purchaser.

The fee chargeable on the issue of a land certificate in respect of the first transfer of a small holding for a value exceeding £300 and not exceeding £1,000, if applied for within three months of the first registration of the purchaser, shall be 5s. (b)

(b) No fees are now payable for land certificates on transfers: see Land Transfer Act, 1897, s. 8 (5).

In all other respects the fee orders for the time being in force in the Land Registry shall apply.

Dated this 15th of August, 1892.

HALSBURY, C.

We certify that this Rule is made with the concurrence of the Treasury.

Signed { GEORGE J. GOSCHEN,
HERBERT EUSTACE MAXWELL.

APPENDIX IV.

CIRCULARS TO COUNTY COUNCILS.

The following circulars have been issued to county councils and county boroughs in England and Wales :—

BOARD OF AGRICULTURE AND FISHERIES,
4, WHITEHALL-PLACE, LONDON, S.W.,

September 30th, 1907.

SIR,—I am directed by the Board of Agriculture and Fisheries to inform you that the Small Holdings and Allotments Act, 1907, comes into operation on January 1st, 1908, and that, in view of the very important and extensive powers which it gives to county councils, the Board would suggest that your council should consider at an early date what steps should be taken to carry out the provisions of the Act in their county.

There are many matters of detail connected with the Act which are receiving the careful consideration of the Board, and as to these communications will be addressed to you from time to time, but the Board think it desirable to call the attention of your council at once to the fact that the Act provides that county councils may themselves take the initiative in preparing a draft scheme or schemes for the provision of small holdings for their county.

At a later period the Board hope to be in a position to nominate officers to confer with your council as to the administration of the Act, but they would suggest in the meantime that your council should at once set on foot preliminary inquiries as to the extent of the demand for small holdings in their county and as to the possibility of satisfying those demands by the acquisition of suitable land either within or without the county. The Board are of opinion that these preliminary inquiries should be as little formal as possible, and they think that no better method could be adopted than to invite the individual members of the council to interest themselves in the matter by making informal inquiries in their respective districts.

It will also be necessary that the provisions of the Act should be made known to the class who are likely to take advantage of it, and in this connexion I am to observe that experience has shown that very useful information is often obtained by the insertion in the local newspapers of advertisements, framed in simple language, inviting applications from men who desire land for small holdings, and requesting applicants to forward particulars as to the quantity of land desired, the locality preferred, the extent of their experience in

agriculture, and the amount of capital. With this information in their possession your council would be in a position to consider the steps to be taken to satisfy the demand so soon as the Act comes into operation.

I am further directed to call the attention of your council to the fact that the small holdings provided by county councils under the Act of 1892 have in no case resulted in any charge being placed on the rates of the county, and that where small holdings are provided under the Act of this year the possibility of any such charge arising has been very considerably diminished. Under Section 17 of the Act the Board are authorised, subject to regulations to be made hereafter by the Board with the approval of the Treasury, to repay to county councils the whole or any part of the expenses incurred by a council in relation to the acquisition of land for the purposes of small holdings (other than the purchase-money, or any compensation, or rent payable in respect of the land); and in pursuance of Section 14 of the Act, the term for the repayment of loans for the purchase of land may be extended to 80 years, and county councils will be able to borrow from the Public Works Loans Commissioners on favourable terms. In addition, in cases in which the carrying out of a scheme under the new Act has resulted, or is likely to result, in a loss, one-half of that loss will be borne by the Exchequer, subject to certain conditions which will be set out in a Treasury minute to be subsequently issued.

I am to add that the expression "county council" in the Act of 1892 and in the new Act includes the council of a county borough.

I am, Sir, your obedient servant,
T. H. ELLIOTT, Secretary.

1st January, 1908.

SIR,—I am directed by the Board of Agriculture and Fisheries to advert to their circular letter of the 30th September last (*supra*) with reference to the Small Holdings and Allotments Acts and to say that, as indicated therein, they are of opinion that the first step which should be taken by your council is to test the extent of the demand for small holdings in their area. The Board would therefore be glad to know what action has been taken or is proposed to be taken by your council for this purpose, either by the issue of handbills calling attention to the Act and the insertion of advertisements in the local newspapers inviting applications, by inquiries through the parish councils and other allotment authorities, or by any other means.

I am also desired to ask that you will inform the Board of the number of applications for land which have been received by your council and the total quantity of land applied for, and, in addition,

the Board will be obliged if you will supply them with copies of any forms, circulars, or other printed matter which have been issued by your council in connection with the Act.

On the receipt of any applications for land for small holdings your council will no doubt endeavour to satisfy themselves as to the qualifications and suitability of the applicants, either by personal inquiries by members of the council or persons authorised by them, or by the issue of a form setting out the points on which your council desire information. The Board think that as a general rule such inquiries should be undertaken by means of personal interviews with the applicants, and that sub-committees, consisting partly of members of the Small Holdings Committee and partly of members of the minor local authorities and other suitable persons, should be appointed for this special purpose for each parish or other convenient area from which applications are received. Such a method would generally be more satisfactory and entail less expense than the correspondence which would be involved by the issue of a form containing a detailed list of questions, which might often deter some of the most suitable applicants. The Board do not think it necessary to suggest to your council the particular points on which information might be sought, which will necessarily vary in individual cases and in accordance with the local circumstances of each county, but they think that it will as a rule be advisable to inquire whether the applicants desire to be supplied with a cottage or other buildings, as the answers to this question will necessarily have an important bearing on the question whether your council determine to purchase or to hire the land necessary to satisfy the demand.

The Board suggest also for the consideration of your council that it would be very useful if information could be obtained as to the extent of the land in your county which is in the possession of the Ecclesiastical Commissioners, the beneficed clergy, universities or colleges, trustees of charity lands, and other public bodies or corporations, and they suggest that inquiry should be made from such owners as to whether they would be willing to let or sell land to your council for the purpose of providing small holdings. In this connection I am to point out that sections 28 and 29 of the Act contain provisions which, at the request of the Ecclesiastical Commissioners, were inserted in order to facilitate the letting of glebe lands for small holdings.

I am further to call your attention to section 36 of the Act which requires a county council to appoint a small holdings and allotments committee which shall take the place of the several statutory committees under the Allotments Act, 1890, and the Small Holdings Act, 1892, and to inquire whether this committee has yet been set up, and, if so, to ask for a list of the members and a statement showing the constitution of the committee, and, in particular, whether it

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provides for the co-optation of non-members of the council on the committee.

The Board would also point out that section 36 of the Act authorises the delegation to the committee of all the powers of a county council under the Acts except the power of raising a rate or of borrowing money, and I am to say that the Board are of opinion that with a view of avoiding all unnecessary delay it is desirable that the Small Holdings Committee should be authorised by your council to conduct all the correspondence relating to the Act and to carry out inquiries etc. without the necessity of having to refer each point to the next quarterly meeting of the council.

The Board are advised that section 36 so far as it requires the appointment of a committee and authorises the delegation of powers to such a committee, applies to the councils of county boroughs as well as to county councils, but to avoid any question as to the powers of the committee it is desirable that they should be appointed allotment managers under section 6 of the Allotments Act, 1887.

The financial assistance which the Board are authorised to give county councils in connection with their operations under the Act falls under two heads. By section 5 (4) of the Act the Board are authorised to pay or undertake to pay out of the Small Holdings Account the whole or any part of the loss which results from the carrying out of any scheme under the Act, and during the progress of the Bill through Parliament a pledge was given that a Treasury Minute should be issued stating that the Board would be prepared to pay one half of any irrecoverable loss which was incurred in connection with a scheme carried out by a county council, provided that the Board was satisfied that the council had acted reasonably and had taken due precautions. The Board are now in communication with the Treasury as to the form of the Minute and they hope that it may be possible to issue it to county councils very shortly, but in the meantime I am desired to point out that section 5 (4) only applies to losses under a scheme, and that, therefore, although county councils are fully at liberty to take whatever steps may seem to them desirable to provide small holdings, and are not compelled to proceed by means of a scheme in every case, yet it will probably be found prudent, at least in cases where there appears to be some financial risk, to provide the small holdings under a scheme in accordance with sections 3 and 4 of the Act, in order that, in the event of a loss, the council may be in a position to receive the assistance which the Board can give under section 5 (4).

The other provision for assistance from the Small Holdings Account is contained in section 17 of the Act, whereby the Board are authorised to repay or undertake to repay, the whole or any part of the expenses incurred by a county council in proceedings, in relation to the acquisition of land for small holdings. Such expenses would

ordinarily include the cost of the valuation and survey of any land proposed to be acquired, the expenses of any local inquiry, the costs of registration of title and other necessary legal expenses, and the Board are considering the issue of regulations under the section laying down the conditions under which the assistance authorised will be given. Your council will of course not be entitled to look to the Board for repayment of any expenses incurred by them in connection with the management of any small holdings which may be established, but the Acts contemplate the addition to the rents or to the instalments for the purchase of the small holdings of a sufficient amount to cover the cost of management, and a management fund might therefore be set up out of which all such expenses would be defrayed.

The Board believe that it will very much conduce to the satisfactory administration of the Act if a special officer of the council is designated to deal with the business arising under the Act. Such an officer could act as clerk to the Small Holdings and Allotments Committee, and he might also be responsible for attending and reporting the meetings of the local sub-committees and for making such inquiries as the committee might direct into the suitability of the applicants for land and the possibility of meeting their demands. In addition he could undertake the management and supervision of the small holdings when established, and the collection of the rents, and could act generally as the estate agent of the council for all the land acquired by them under the Act. The salary of such an officer would to a considerable extent be recoverable from the management fund above referred to.

The Board do not suggest that such an officer of the council should be employed to advise them in connection with the valuation for purchase or hiring of any land proposed to be acquired for small holdings. They think that for such work the council will prefer to engage the services of an experienced professional valuer, who would be paid by fees calculated on the usual scale, and I am to point out that the adoption of this course would facilitate the adjustment of any application by your council for the repayment under section 17 of their expenses in relation to the acquisition of land.

The Board have received certain inquiries as to the form in which a scheme for the provision of small holdings under the Act should be prepared, and in the case of schemes under sub-section (3) of section 3, which would be of a somewhat different character from schemes prepared under sub-section (4), the Board think that they might take the form of a report made to the council by the Small Holdings Committee setting out the land proposed to be acquired, the price or rent at which it can be obtained, the manner in which it is proposed to be sub-divided, and the method and cost of the equipment, in order that the Board may be in a position to judge whether the scheme is of such a character that they would be justified in giving it their

approval and thereby undertaking under section 5 (4) to repay half of any loss which might be incurred. Where the council propose to acquire land at a sale by auction this procedure may create some difficulty, but in most other cases it should be possible to frame a scheme on these lines before the council unconditionally enter into a contract for the purchase or hiring of land, and where land is acquired at an auction the Board will be ready to consider a subsequent application for their approval. In these circumstances the Board do not think that any model form of scheme can conveniently be prescribed, and they are of opinion that each county council should submit their proposals in the form which appears most convenient in the particular circumstances of each case. It will probably be desirable to prepare a separate scheme for each individual transaction, and the Board will be glad to be informed at an early stage in the proceedings of any action proposed to be taken, in order that they may have an opportunity of expressing their opinion before a decision is arrived at as to the particular land to be acquired.

Under section 7 of the Small Holdings Act, 1892, as extended by section 10 of the Act of 1907, your council are required to make rules which will have to be confirmed by the Board. Model rules are therefore being prepared by the Board for this purpose, and copies will be sent to you at an early date.

It appears that a large number of small holdings associations are in process of formation with a view of applying for land under section 9 of the Act, and having regard to the necessity of the Board's consent being obtained to any such letting, I am to request that, if any such applications are made to your council, you will furnish the Board with a copy of the rules of the association, in order that they may be in a position to judge whether the association conforms to the conditions prescribed in the section.

The Board propose to issue a circular to parish councils with reference to their powers and duties in regard to the provision of allotments, and copies of such circular will be sent to you for the information of your council in connection with their functions under section 24 (1) of the Small Holdings and Allotments Act, 1907.

I shall be glad to forward to you additional copies of this circular on application, and I am to add that the Board will be happy to afford your council any assistance or advice which it is in their power to give in connection with any matters which may arise under the Acts.

I am, Sir,

Your obedient Servant,

T. H. ELLIOTT,
Secretary.

25th January, 1908.

SIR,—I am directed by the Board of Agriculture and Fisheries to advert to their circular letter of the 1st instant and to enclose herewith for the information of your council a copy of a Treasury Minute issued in pursuance of the provisions of section 5 (4) of the Small Holdings and Allotments Act, 1907, as to the payment out of the Small Holdings Account of a contribution towards any loss which may be unavoidably incurred in carrying out a scheme for the provision of small holdings under that Act.

I am, Sir,

Your obedient Servant.

T. H. ELLIOTT,
Secretary.

TREASURY MINUTE DATED THE 31ST OF DECEMBER 1907.

(Referred to in above letter)

The Chancellor of the Exchequer calls the attention of the Board to section 5 (4) of the Small Holdings Act of last Session, which is in the following terms :—

“If it appears to the Board (of Agriculture and Fisheries) that the carrying out of a scheme under this Act has resulted or is likely to result in a loss, the Board may, with the consent of the Treasury, pay or undertake to pay out of the Small Holdings Account the whole or any part of that loss.”

The Chancellor of the Exchequer further states that, in the Debate on the Small Holdings Bill on the 12th August last, he authorised the First Commissioner of Works, who was in charge of the Bill, to inform the House that, in cases in which a local authority in carrying out a scheme under the Act had incurred a loss, one half of such loss would, subject to enquiry by the Treasury, be paid from public funds, provided that the Board of Agriculture and Fisheries were able to certify that the authority in question had acted reasonably, and with due precaution, and that the loss was irrecoverable.

In the absence of any experience of the working of the Act, the Chancellor of the Exchequer does not think it possible to define very closely the circumstances in which public funds will be called upon to provide for such losses. If the proceedings of the local authorities are conducted with ordinary discrimination and prudence, no losses should be incurred. But if, after all reasonable precautions have been taken, an unavoidable loss ensues, the Chancellor of the Exchequer thinks that the taxpayer may fairly be expected to share it to the extent of one half.

He therefore recommends the Board to accept the liability above indicated, subject to the following regulations and conditions:—

(1) Any local authority desiring to claim a grant should make application to the Board of Agriculture and Fisheries.

The application should be accompanied by an account of the income and expenditure of the local authority in respect of the scheme for the period to which the claim relates, and a balance-sheet showing the assets and liabilities of the authority in connection therewith.

(2) The Board should certify that they are satisfied—

(i) that the loss cannot reasonably be expected to be recouped out of receipts from the future working of the scheme;

(ii) that the loss is not due to (a) excessive price or rent agreed to be paid by the Council, (b) unreasonable expenditure on equipment, (c) insufficient care in selection of tenants and the subsequent supervision of their proceedings, (d) an undue proportion of the general small holdings expenses of the council being charged to the scheme;

(iii) that the council have in the case of holdings let used their best endeavours to obtain rents fixed at amounts which might reasonably be expected to be sufficient to recoup to the council all expenses incurred in the acquisition of the land (including repayment of capital where the land is purchased) or in the adaptation or subsequent management of the land;

(iv) that the council have in the case of holdings sold conformed with the requirements of the Small Holdings Acts;

(v) that the council have taken full advantage of their borrowing powers;

(vi) that the council have acted reasonably in carrying out the scheme;

(vii) in the case of loss on a scheme prepared under section 3 (3) of the Small Holdings and Allotments Act, 1907, that the total receipts of the council under the Small Holdings Acts for the current financial year (with any balance of such receipts brought forward from the previous year) will be insufficient to defray their expenditure under the said Acts unless the Council receive the contribution applied for.

(3) The Treasury reserves a right to make independent enquiry into the circumstances if it thinks fit.

My Lords approve,

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